

A Game Changer? The Use of Positive Action to Address Racial
Disadvantage within Professional Football Coaching

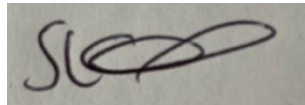
Thesis submitted in accordance with the requirements of the University of
Chester for the degree of Doctor of Philosophy by Sophie Laura Cowell.

September 2021

Declaration

The material being presented for examination is my own work and has not been submitted for an award of this or another HEI except in minor particulars which are explicitly noted in the body of the thesis. Where research pertaining to the thesis was undertaken collaboratively, the nature and extent of my individual contribution has been made explicit.

Signed:

A handwritten signature in dark ink, appearing to be 'S. Lee', written on a light-colored background.

Date: 15 September 2021

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First and foremost, I would like to thank my supervisors. I am grateful beyond words to Professor Chantal Davies, whose kindness, patience, support, inspiration and expertise enabled me not only to start this thesis, but to see it through. Thank you to Dr Ruth Healey, for her invaluable advice and encouragement, without which I would not have reached this point. I am also grateful to Professor Jethro Newton for his continued support and feedback. Completing this thesis would not have been possible without all of the time and effort that my supervisors gave to me and I am incredibly grateful.

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Finally, this thesis is dedicated to my Dad: my personal entertainment manager, my critical friend and my best friend. A true Game Changer who showed me that anything is possible. This is for you, Dad.

Nil Satis Nisi Optimum.

A Game Changer? The Use of Positive Action to Address Racial Disadvantage within Professional Football Coaching

Sophie Cowell

Abstract

This research considers the use of positive action to address the underrepresentation of Black, Asian and Minority Ethnic (BAME) managers and coaches within English professional football. It focuses on the English Football League's (EFL) Recruitment Code as an example of such a measure and explores whether the Recruitment Code can be considered an effective or flawed form of positive action to redress the racial inequalities faced by BAME managers and coaches.

Twenty-five percent of professional footballers within the English professional leagues are BAME, significantly higher than the general BAME population within the United Kingdom of 14% (Sports People's Think Tank 'SPTT', 2015). Despite this, the number of BAME managers and coaches employed within senior positions in professional football remains disproportionately low at 4.6% (SPTT, 2017). At the beginning of the 2016/17 season, the EFL introduced a positive action measure requiring clubs to interview at least one candidate from a BAME background for coaching and management positions (EFL, 2017).

Whilst there exists a body of research into the experiences of BAME managers and coaches and barriers to their career progression, the issue is still largely unexplored from an anti-discrimination law perspective (Veuthey, 2013). Further, research on the EFL's Recruitment Code is limited. This research aims to fill this gap, by utilising a mixed-methods approach to explore stakeholder perceptions of positive action and the EFL's Recruitment Code as a form of positive action. It considers the extent to which the Recruitment Code may fit within the legal framework and whether it may demonstrate the legislative approach of reflexive regulation working effectively.

This research identified several barriers to BAME manager and coach career progression, including higher standards, extra pressure, lack of role models, the recruitment practices used, and the specificity of football. It found that whilst most participants within this research supported the use of positive action, they perceived significant confusion between positive action and positive discrimination amongst the general public. On the EFL's Recruitment Code, participants pointed to a lack of transparency and a general lack of understanding, believing the Code would not succeed in isolation and should form part of a package of measures. When considered in light of reflexive regulation, participants also pointed to factors including a perceived lack of consultation, monitoring and enforcement that suggest that features of successful reflexive regulation, as outlined by Hepple (2011), are missing. However, some participants commended the EFL for implementing the measure in light of this perceived lack of understanding of, and support for, positive action.

This thesis provides Pointers for Action at Micro (Club), Meso (Sector) and Macro (National Policy) Levels, including the need for greater education and awareness, transparent monitoring and senior buy-in, as well as a need to rephrase the concept of positive action. The thesis outlines how the EFL's Recruitment Code has the potential to be successful if introduced as part of a holistic life cycle approach to addressing underrepresentation, but in its current format can be considered a flawed form of positive action that is unlikely to redress the racial disadvantage that BAME managers and coaches face. It concludes by detailing the impact that a successful positive action measure within such a high-profile arena could have on both football and the use of positive action generally, if the EFL's Recruitment Code is adapted in line with the suggested implications and pointers for action.

Glossary and Abbreviations

Term	Definition
BAME	Black, Asian and Minority Ethnic; the most salient term used within the United Kingdom context and the term adopted throughout this thesis. See Section 2.2, Chapter Two for further discussion.
Coach	A term encompassing first-team, development and youth squad coaches in English football.
ECJ	European Court of Justice, now known as the Court of Justice of the European Union.
EDI	Equality, Diversity and Inclusion. A term often used in workplace contexts to describe work centred on ensuring fairness across protected characteristics and preventing and tackling discrimination and harassment. See Section 2.3, Chapter Two for further discussion on equality principles.
EFL	English Football League, known as “The Football League” until the beginning of the 2016/17 season. A league competition comprising of the three professional leagues below the Premier League in the English football pyramid, namely the Championship, League One and League Two.
EHRC	Equality and Human Rights Commission. Great Britain’s national equality body; a statutory non-departmental public body responsible for enforcing the Equality Act 2010. Their duties include “reducing inequality, eliminating discrimination and promoting and protecting human rights” (EHRC, 2019, para. 4).
Equality Act 2010	The Act of Parliament introduced in 2010 to “harmonise discrimination law, and to strengthen the law to support progress on equality” (Explanatory Notes, Equality Act 2010, para. 10).

EU	European Union.
FA	The Football Association; the governing body of association football in England, Guernsey, Jersey and the Isle of Man.
GB	Great Britain.
HR	Human Resources.
LGBT+	Lesbian, gay, bi and trans plus.
LMA	League Managers Association, the trade union for professional football managers in English football.
Manager	A term used within this thesis to describe a first-team head coach in English football that has responsibilities beyond coaching.
NFL	National Football League, a professional American Gridiron football league consisting of 32 teams.
PFA	The Professional Footballers' Association; the union for professional footballers in England and Wales.
PLES	Premier League Equality Standard; the equality and diversity framework for Premier League clubs.
Positive Action	Not legally defined, but throughout this thesis defined as an “activity designed to improve the position, in terms of the distribution of benefits or dis-benefits, of a given social group or sub-group... on the basis that its members suffer systematic disadvantage in that regard” (Barnes, 2009, p. 652).
Positive Discrimination	“Recruiting or promoting a person solely because they have a relevant protected characteristic” and/or the use of quotas (Jarrett, 2011, p. 3). Positive discrimination is almost always unlawful.
Premier League	The highest league in the English football pyramid.
Protected Characteristic	Protected characteristics are “the grounds upon which discrimination is unlawful” (Equality and Human Rights Commission, 2016). The Equality Act 2010 lists nine protected characteristics, these are: age, disability,

	gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation (Section 4, Equality Act 2010).
The Rooney Rule	A rule in the NFL requiring teams to interview at least one minority ethnic candidate for head coaching and senior football operations jobs. The Rule is named after Dan Rooney, the former owner of the Pittsburgh Steelers.
SPTT	The Sports People’s Think Tank. An organisation formed “to address social, cultural and all common issues current sports professionals and ex-professionals consider important and in need of change” (SPTT, n.d., para. 3).
UK	United Kingdom.
USA	United States of America
VAR	“Video Assistant Referee... a qualified referee who watches the match via a number of screens and can view slow-motion replays, enabling them to advise the on-field referee.” (Premier League, 2020, para. 3).
YWT	Young Women’s Trust. A “feminist organisation working to achieve economic justice for young women” (YWT, n.d., para. 1).

Contents

		Page
	Declaration	I
	Acknowledgements	ii
	Abstract	iii
	Glossary and Abbreviations	v
Chapter One	Introduction	1
Chapter Two	Background Context	3
2.1	Introduction	3
2.2	Categorisation and Terminology	3
2.3	Equality Concepts	8
2.4	Sports Governance	12
2.5	Equality in Sport and Football	15
2.6	Race Equality in Football	16
2.7	Coaches from a Black, Asian and Minority Ethnic Background within English Football	18
2.8	The Rooney Rule in the NFL	21
2.9	The EFL's Recruitment Code	27
2.10	Legal Context	33
2.10.1	Defining and Conceptualising Positive Action	33
2.10.2	Domestic Legal Development	38
2.10.3	European Context	39
2.10.4	Domestic Legal Framework	41
2.10.5	Positive Action in Practice	45
2.11	Reflexive Regulation	47
2.12	Critical Race Theory	52
2.13	Conclusion	56
Chapter Three	Methods and Methodology	60
3.1	Description	60
3.2	Rationale	61
3.3	Research Objectives	61
3.4	Research Questions	62
3.5	Research Philosophy	63
3.6	Methodology	64
3.7	Positionality	67
3.8	Methods	70
3.8.1	Data Collection	70
3.8.2	Sampling	74
3.8.3	Data Analysis	75
3.9	Ethics	76
3.10	Reflection	79

3.10.1	Data Collection and Sampling	80
3.10.2	Categorisation and Terminology	81
3.10.3	“Race Wrestling”	83
3.11	Dissemination	84
Chapter Four	Barriers to BAME Manager and Coach Career Progression	88
4.1	Introduction	88
4.2	Higher Standards	88
4.3	Extra Pressure on BAME Managers and Coaches to Perform	94
4.4	Role Models	98
4.5	Racial Stereotypes	104
4.6	The Limited Opportunities for BAME Managers	108
4.7	Recruitment Practices	112
4.8	The Specificity of Football	124
4.9	Conclusion	129
Chapter Five	Perceptions of Positive Action	132
5.1	Introduction	132
5.2	Support for Positive Action	133
5.2.1	EDI Practitioners	133
5.2.2	Academic Researchers	135
5.2.3	Coaches and Ex-Professional Players	139
5.3	Lack of Support for Positive Action	140
5.3.1	EDI Practitioners	141
5.3.2	Academic Researchers	143
5.3.3	Fans	146
5.3.4	Coaches and Ex-Professional Players	148
5.4	Conclusion	152
Chapter Six	The EFL’s Recruitment Code	154
6.1	Introduction	154
6.2	Problems with the EFL’s Recruitment Code	154
6.2.1	Lack of Communication	155
6.2.2	Lack of Understanding	157
6.2.3	Content of the Code – Permitted Exceptions	159
6.2.4	Lack of Monitoring and Enforcement	161
6.2.5	Impact of Failure	166
6.2.6	Impact on BAME Managers and Coaches	169
6.3	Positives of the EFL’s Recruitment Code	171
6.3.1	Proactive Step	171

6.3.2	Potential Success	175
6.4	Conclusion	181
Chapter Seven	The Legal Framework: Positive Action and Reflexive Regulation	183
7.1	Introduction	183
7.2	The EFL's Recruitment Code and the Positive Action Legal Framework	183
7.2.1	Section 159 Equality Act 2010	184
7.2.2	Section 158 Equality Act 2010	189
7.3	Reflexive Regulation	190
7.3.1	Reflexive Regulation and the Specificity of Football	192
7.3.2	Reflexive Regulation and the EFL's Recruitment Code	195
7.3.2.1	Internal Scrutiny	196
7.3.2.2	Interest Groups	196
7.3.2.3	Enforcement Mechanisms	199
7.4	Conclusion	201
Chapter Eight	Improving the Effectiveness of the EFL's Recruitment Code	205
8.1	Introduction	205
8.2	Enforcement	205
8.3	Need for Greater Buy-In and Understanding	211
8.4	Holistic Approach Needed	218
8.5	Conclusion	228
Chapter Nine	Implications and Pointers for Action	231
9.1	Introduction	231
9.2	Micro (Club) Level	231
9.2.1	Understanding	232
9.2.2	Implementation	233
9.2.3	Environment	235
9.3	Meso (Sector) Level	237
9.3.1	Recruitment Practices	237
9.3.2	Understanding and Transparency	238
9.3.3	Implementation of Voluntary Code	240
9.3.4	Holistic Life Cycle Approach	241
9.4	Macro (Policy) Level	242
9.4.1	Understanding of Positive Action	242
9.4.2	Conceptual Confusion Surrounding Positive Action and Positive Discrimination	244
9.4.3	Reflexive Regulation and the Specificity of Football	244
9.5	Conclusion	246

Chapter Ten	Conclusion	247
10.1	Introduction	247
10.2	Summary of Findings	247
10.3	Significance of Research	249
10.4	Implications for Future Research	250
10.5	Final Comment	251
References		253
Appendices		
	List of Appendices	276
Appendix A	Semi-Structured Interview Guide	277
Appendix B	Written Questions Provided to Harry	280
Appendix C	Participant Information Sheet	283
Appendix D	Participant Consent Form	286
Appendix E	Handout on EFL's Recruitment Code Provided to Participants	287
Appendix F	Book Chapter "Using Reflexive Regulation to Increase the Racial Diversity of Professional Football Coaching in England: the EFL Voluntary Code of Recruitment." Included within Bradbury, Lusted and van Sterkenberg (1 st Ed.), <i>'Race', Ethnicity and Racism in Sports Coaching</i> . Oxford: Routledge (evidence of dissemination)	289
Appendix G	List of Pointers for Action	305
Appendix H	Summary of Findings	311

Chapter One

Introduction

Sport is often considered to be “a microcosm of society” (Shropshire, 1996, p. 456) and, as such, discriminatory practices and inequalities that exist within society will be reflected within sport. Despite this, many, such as Sport England (2000), argue that sport can play a key role in promoting diversity and that it is capable of advancing inclusion beyond what is reflected in society more generally. Arguably, this can be seen within on-the-field racial diversity, particularly within English professional football, where the proportion of footballers from Black, Asian and Minority Ethnic (BAME) backgrounds is around 11% higher than the proportion of people from BAME backgrounds within the general population (Sports People’s Think Tank (SPTT), 2015).

Despite its apparent success in on-the-field racial diversity, one of the prevailing diversity and inclusion issues within English professional football remains the underrepresentation of professional managers and coaches from a BAME background. Only approximately 4.6% of senior coaches are BAME (SPTT, 2017), significantly lower than both the number of BAME professional players and the general BAME population. For several years commentators such as Kick It Out and the PFA had called for action to be taken to redress this underrepresentation (Kick It Out, 2011). However, despite softer initiatives such as mentoring, bursaries and placement opportunities, football authorities avoided introducing positive action measures focused more specifically on helping BAME managers and coaches to secure employment opportunities. This changed in 2015, when the English Football League (EFL) announced its intention to introduce a measure similar to the Rooney Rule used within the National Football League (NFL) in the United States. The EFL’s Recruitment Code was introduced in pilot form at the beginning of the 2016/17 season and rolled out to all EFL clubs in 2019 (see Section 2.9 of Chapter Two for further detail on the introduction of the EFL’s Recruitment Code).

The introduction of the EFL’s Recruitment Code is particularly notable given that there had been calls for the introduction of such a measure for several

years without action and, further, that positive action is generally an under-utilised means of addressing underrepresentation within England (Davies & Robison, 2016). Additionally, the underrepresentation of BAME managers and coaches is largely unexplored from an anti-discrimination law perspective (Veuthey, 2013) and there is currently very little socio-legal research into the use of positive action. This research thus aims to consider whether the EFL's Recruitment Code is an effective or flawed form of positive action to address racial inequalities faced by BAME managers and coaches within the EFL's leagues.

In light of this aim, Chapter Two provides background context to both the EFL's Recruitment Code and positive action more generally, as well as addressing the issue of categorisation and terminology. The following Chapter details the research methods, methodology and research questions and objectives; it also provides a reflection on the research process. Chapter Four outlines research participants' perceptions on the barriers to career progression that BAME managers and coaches face. Chapter Five considers participants' perceptions of positive action more generally, before Chapter Six explores perceptions of the EFL's Recruitment Code as a specific form of positive action aimed at overcoming the barriers identified in Chapter Four. Chapter Seven provides a legal analysis of the Recruitment Code as a form of positive action in light of the legal framework and reflexive regulation theory, considering whether the problems identified with the Code are exacerbated by a potential lack of adherence to the legal framework. The following Chapter details participants' views on ways in which the EFL's Recruitment Code can be improved to become more effective at addressing the underrepresentation of BAME managers and coaches. The thesis then outlines implications and suggested pointers for action based on these findings in Chapter Nine. The final Chapter summarises the research findings on the effectiveness of the Recruitment Code as a form of positive action to address racial inequalities. It considers the impact of these findings and suggests areas for further research.

Chapter Two

Background Context

2.1 Introduction

This background context considers the EFL's measures aimed at increasing the representation of coaches from a BAME background. These measures include the introduction of an interview rule - similar to the Rooney Rule used within the NFL in the USA – that requires clubs to interview at least one BAME applicant for all academy positions and for first-team positions in instances where they run a full recruitment process (EFL, n.d.). This review will firstly address the issue of terminology; it will then consider equality concepts and the wider area of equality in sport generally to illustrate the backdrop against which the EFL's Recruitment Code has been introduced and the more specific issues facing coaches from a BAME background. As the EFL's Recruitment Code is similar to the NFL's Rooney Rule, the review will then consider literature regarding the Rooney Rule, including how and why it was introduced, and whether it is considered to be a success, as this may provide an indication as to how the EFL's Recruitment Code may be received. The Recruitment Code is a form of positive action, and as such it is important to review literature regarding this, considering the legal framework in Great Britain and the use of positive action within other areas. Finally, it can be argued that the proposals may be an example of the legislative approach of 'reflexive regulation' working effectively, and so literature regarding this concept will be explored.

2.2 Categorisation and Terminology

As this research focuses on managers and coaches in English professional football that are underrepresented in relation to their race and/or ethnicity, it is necessary that this research adopts consistent terminology to describe this group population. However, the terminology that can be used in this regard, and the adoption of categorisation itself, is heavily debated. This section

outlines the key arguments within the literature; it then details the approach taken in this research and the rationale for this approach.

To firstly consider the issue of categorisation and the use of collective terminology “to describe the minority ethnic group population” (Aspinall, 2002, p. 804), it is acknowledged that this issue is particularly complex: there are a number of terms used within Britain, and “fear of getting it wrong or offending can cause confusion as to what are acceptable terms of use” (Universities Scotland, 2006, p. 73). Additionally, Aspinall (2002) – one of the key researchers in this area – argues that there is little that is not contested or debated. Because of the complexity involved, many researchers use general umbrella terms that are not particularly precise. This can have significant implications for the research, as the inconsistent use of terms can lead to “confusion or ambiguity about the population being described” (Aspinall, 2002, p. 804), which will in turn lead to questions around the validity of the research. In addition to this, importantly Maylor (2009) outlines how the issue of terminology produces “real consequences for the lives of those using and/or who are subsumed within particular definitions” (p. 369). Because of this, it is important that researchers engage with the issue (Brunsma & Rockquemore, 2002).

As stated, there are a number of terms used within Britain to describe the minority ethnic group population, and Parekh (2000), in the introduction to “The Future of Multi-Ethnic Britain” describes this situation as “a source of considerable conceptual and political muddle” (p. x). In 2002, Aspinall stated that the terms with “widest saliency” were ‘Ethnic Minority’ and ‘Minority Ethnic’ (often used interchangeably), and further identified ‘Black and Minority Ethnic’ or ‘Black and Ethnic Minority’ as common terms (p. 804). Since then, it appears that ‘Black and Minority Ethnic’ (BME) and ‘Black, Asian and Minority Ethnic’ (BAME) have arguably become the most widely-used terms, with the Institute of Race Relations defining BME/BAME as “the terminology normally used in the UK to describe people of non-white descent” (Institute of Race Relations, n.d., para. 8). This can be seen through the use of ‘Black, Asian and Minority Ethnic’ within Government reports and official healthcare, education

and criminal justice settings and beyond. Despite this, although the terms mentioned above are most salient, this does not mean that they are without debate, and each aspect of the terms outlined above can be subject to considerable criticism.

To firstly consider the use of 'Black', this is a term that has experienced change and development in its use since the 1950s (Universities Scotland, 2006). Although the term had early negative connotations, these were challenged by the North American Civil Rights Movement, who "redefined [Black] to refer to those peoples who suffered from and struggled against white racism" (Universities Scotland, 2006, p. 77). As a result of this association with the Civil Rights Movement, 'Black' became a largely accepted term used in the advancement of rights and is now considered acceptable to most Black African community members (Aspinall, 2011); however, this is certainly not unanimous. Aspinall (2011) states "some constituencies find the term offensive, notably, academic stakeholders and some African community members" (p. 33); Tsri (2015), for example, argues against the use of the term, highlighting how "The word 'black' is used in English (and in other languages) both symbolically, to evoke evil, fear and inferiority" (p. 2) and to describe people and things as something other than white. Further, Aspinall (2011) states that whilst some argue that "language of colour is needed to set white privilege against black disadvantage" (p. 33), others are highly critical of the use of a term that focuses on skin colour and physical differences, arguing that it can be challenged as an homogeneous term that "conceals substantial diversity with respect to countries of origin, language and migration histories" (p. 33), and overlooks other key features such as "class, culture and gender" (p. 34). Universities Scotland (2006) outline how some African communities have challenged the term as "divisive and unhelpful" (p. 78) often leading to confusion around the categories imposed; for example, some groups are categorised using "colour" as in "Black African/Black Caribbean" and other ethnic groups, such as Asians, are not categorised under colour but according to national origins such as "Indian/Bangladeshi/Pakistani" (p. 78).

If 'Black' is considered too homogeneous a term to describe those of African descent, then this is certainly a criticism of the term when it is also applied to wider minority ethnic groups. The Institute of Race Relations outlines how the term was also used by "other minority ethnic groups, especially Asians, who feel that their common experience of racism outweighs cultural differences" (Institute of Race Relations, n.d., para. 7), and this can perhaps be seen as the term accurately specifies "exposure status to racism" (Aspinall, 2011, p. 34) and the fact that the discrimination was as a result of "skin colour or physical differences" (Aspinall, 2002, p. 805). Alexander (2002) states that in the 1970s and 1980s, "Asian, African and Caribbean groups organized, mobilized and resisted racial disadvantage and discrimination under the banner of 'black'" (p. 554). Despite this, it is now largely recognised that the term is not appropriate to cover all of these groups, as Hall (2000) states that it is important to "recognise the complex internal cultural segmentation" (p. 127). The most important criticism of the use of 'Black' as a term to describe the wider minority ethnic group population is that, as Aspinall (2002) states, it is often not accepted by those to whom it is applied, particularly Asian people. Research by Modood, Berthoud, Lakey, Nazroo, Smith, Virdee, and Beishon (1997) found that only one fifth of over 1500 people from South Asian groups and one Chinese person out of 118 answered 'yes' when asked if they considered themselves Black (Aspinall, 2002, p. 805). In addition to this, participants in research carried out by Maylor (2009) found the use of 'Black' to include members of African, African-Caribbean, Asian, and other minority ethnic communities "very offensive" (p. 373). Aspinall (2002) outlines that some claim the extension of the term to include 'Asian' is "a divisive strategy that dilutes the political notion of 'blackness'" (p. 805). As Aspinall (2002) states, "acceptability to those being described" (p. 810) is the key factor in determining whether a term should be used. In light of this, it appears clear from the literature that 'Black' should not be used to describe the wider minority ethnic population.

As it became widely recognised that 'Black' is not an appropriate term to use to describe the wider minority ethnic population, terms such as 'minority' and those focusing on 'ethnicity' became increasingly used. Again, however, these

terms have been subject to criticism. The use of the 'minority' was criticised heavily in the Parekh Report (2000) as it "has connotations of 'less important' or 'marginal'", with the Report arguing that in many cases its use "is not only insulting but also mathematically misleading or inaccurate" (p. xxiii). In addition to this, the term "perpetuates the myth of white homogeneity" (Parekh Report, 2000, p. xxiii), that those that are not part of a minority are part of a single homogeneous majority within which there are no differences or tensions. The use of 'ethnic' was also criticised within the Parekh Report (2000), within which it was stated that, although within specialist usage "an ethnic group is one whose members have common origins, a shared sense of history, a shared culture and a sense of collective identity" (p. xxiii), the term is commonly used in a non-specialist way to imply "not-Western... not-white... or not-British" and this may obscure its usage (p. xxiii).

These criticisms can be questioned, however, and Aspinall (2002) argues "such narrow policing of language is jejune in the context of debates about the terminology for describing ethnicity and ethnic relations in Britain" and that "while 'minority', like any appellation, is open to misuse, this is not an argument to proscribe a term that is salient and has a well-established meaning" (p. 804). Furthermore, despite the criticisms of 'ethnic' and 'minority', these terms are commonly used. Although in the past 'ethnic minority' and 'minority ethnic' were often used interchangeably, 'minority ethnic' is now more widely accepted. Universities Scotland (2006) argue that 'ethnic minority' often suggested that "the minority or marginalised status of such a group arose from its "possession" of ethnicity itself, rather than to the low value ascribed to its particular ethnicity in the wider 'majority' cultural/ethnic environment", which they state is problematic as "ethnicity is a characteristic of all individuals and groups" (p. 82). They argue that 'minority ethnic' goes some way to improving this (Universities Scotland, 2006). As stated above, the most widely accepted terminology now appears to be 'Black and Minority Ethnic' or 'Black, Asian and Minority Ethnic'; however, this can be criticised as some argue that it implies "that the black groups do not constitute minority ethnic groups" (Aspinall, 2002, p. 804).

Although it is acknowledged that 'Black, Asian and Minority Ethnic' can be criticised, as this is the most widely accepted terminology, this is what shall be used within this thesis. 'Black, Asian and Minority Ethnic' is a homogeneous term and therefore has the problems associated with this, in that it "[conceals] substantial diversity" (Aspinall, 2011, p. 33); however, Aspinall (2009) argues "any official category will conceal some heterogeneity" (p. 1425) and that there is little that is not contested. Because of this, there are many within the literature that argue against the use of categories at all, and state that individuals should always have the opportunity to self-define, and whilst this will be important for research design, it is felt that within this review it is necessary to follow the key points made by Aspinall (2002), who argues that the most important points are consistency and the acceptability to those being described. It is thus felt that it is important to use the terminology adopted by others in this area.

During the pilot for the Recruitment Code, the EFL used 'Black, Asian and Minority Ethnic' (EFL, 2015), as does the key report by the SPTT (2014), in addition to the League Managers Association (2015) and key charities in this area, such as Kick It Out. Further, whilst the terms "people of colour" and "Black, Indigenous and people of colour" have gained traction in the USA, BAME is still considered the most salient term adopted throughout the UK beyond the football context, used within Government reports and official settings, and beyond. Because of this, although it is acknowledged that 'Black, Asian and Minority Ethnic' has criticisms, as does the use of categories in general, it is believed that this term is the most appropriate to use within this thesis. It should be noted that when referencing existing research, the term adopted in that research will be used; this includes reference to "African American" and "Minority" or "Minority Ethnic" coaches when outlining research into the Rooney Rule in the NFL.

2.3 Equality Concepts

Before discussing equality issues in sport and football, it is important firstly to outline key equality concepts, particularly in relation to formal and substantive

equality. Barnard and Hepple (2000) argue that formal equality centres on consistency, where “likes must be treated alike” (p 562). This essentially means that individuals should be treated equally, irrespective of protected characteristics. Fredman (2016a) describes formal equality or the equal treatment principle as “possibly the most pervasive interpretation of the right to equality” (p. 716), citing laws prohibiting direct discrimination and the right to equal pay for work of equal value as key examples of the principle in practice. Barnard and Hepple (2000) identify formal equality and the equal treatment principle as reflected in key equality and anti-discrimination legislation, such as the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995. They further state that formal equality and equal treatment means that no particular outcome is guaranteed; accordingly, it would not violate the principle if, for example, “an employer treats white and black workers equally badly” (Barnard & Hepple, 2000, p. 563). The consistency of treatment is one of the key criticisms of the formal approach, as it means that a claim can be satisfied by depriving by all groups of a particular benefit (Barnard & Hepple, 2000). Fredman (2016a) argues that an example of this ‘levelling down’ in practice can be seen in the case of **A v Secretary of State for the Home Department [2004]**. In this case, the House of Lords struck down legislation permitting the indefinite detention of non-UK nationals suspected of international terrorism without trial, on the grounds that it did not apply to UK nationals who were similarly suspected of international terrorism. Rather than removing or amending this restriction on liberty, the Government responded by amending the legislation to apply to UK nationals, as well as to non-UK nationals (Fredman, 2016a).

Fredman (2016a) identifies a second key issue with formal equality and the consistency approach, in that “it assumes that the same treatment is always appropriate” (p. 718). She argues that when one individual or group has “antecedent disadvantage” (p. 718), treating them in the same way as those that do not suffer this disadvantage may actually perpetuate inequality and difference; accordingly, unequal treatment may actually be needed to achieve equality. Fredman (2016a) states that the underlying principle of formal equality is that once protected characteristics are disregarded, “individuals can

be treated entirely on their own merit” (p. 718). However, she argues that merit is often judged according to the standards set by the dominant group; this means that the principle that there is a “universal individual” is “deeply deceptive” as often the comparator is actually “clothed with the attributes” of the dominant group (Fredman, 2016a, p. 719). She further argues that the principle that identities should be discarded is problematic because “diverse individual identities may be enriching and desired” (Fredman, 2016a, p. 720). As such, the issue is not with the identities themselves, but the harmful treatment ascribed to them (Fredman, 2016a). Fredman (2016a) further points to the need to prove causation in discrimination cases as an issue with the formal approach that centres on equal treatment, as often discrimination is the result of structurally embedded inequality, rather than acts of unequal (or less favourable) treatment attributable to one person.

Fredman (2016a) argues that the limitations of the formal approach are now largely well recognised, particularly in relation to its failure to “address deeply entrenched patterns of social disadvantage” (Fredman, 2005, p. 163). As such, there has been a move towards a substantive approach to equality, which recognises that it is not protected characteristics that cause issues *per se*, “but the attendant disadvantage” (Fredman, 2005, p. 166). Despite this, the exact definition and meaning of substantive equality is still debated. Fredman (2016a) argues that substantive equality should not be summarised in a single formula. She states that focusing on one formula, such as dignity or equality of opportunity or results, can be criticised. For example, whilst focusing on equality of results helps to avoid the problems with equal treatment further entrenching inequality, it raises questions around which results matter and what ‘equality’ actually means in that context, as well as failing to assist with intersecting identities and addressing levelling down and structural disadvantage. She further argues that focusing on equality of opportunity helps to overcome institutional discrimination but again raises questions around what counts as an ‘opportunity’ and does not guarantee “greater fairness in the result” (Fredman, 2016a, p. 723). Further, focusing on dignity is said to be “an intuitively appealing concept” but does not necessarily result in equality (Fredman, 2016a, p. 715).

Instead of the above approach, Fredman (2016a) proposes a four-dimensional approach to substantive equality: “to redress disadvantage; address stigma, stereotyping, prejudice and violence; enhance voice and participation; and accommodate difference and achieve structural change” (p. 712). She argues that redressing disadvantage is one of the key benefits of substantive equality over formal equality because the asymmetric treatment enables the focus to be on “the group which has suffered disadvantage” (Fredman, 2016a, p. 728), recognising that it is not their characteristics that are the problem “but the detrimental consequences attached to that status” (Fredman, 2016a, p. 728). Further, stigma, stereotyping and prejudice can be experienced even when there is not relative disadvantage. Addressing this recognises the importance of individual identities and moves beyond the concept of ‘dignity’ by addressing the social consequences of protected group membership, rather than the characteristic itself; for example, under this approach “it is possible to address the social implications of disability rather than focusing on the impairment” (Fredman, 2016a, p. 731). Fredman’s (2016a) third aim centres on the importance of participation, both political and in relation to community and society, and recognises that ensuring participation in this regard may be require a departure from the equal treatment principle. As substantive equality recognises that protected characteristics can be “valued aspects of an individual’s identity” (Fredman, 2016a, p. 733), Fredman’s (2016a) fourth aim focuses on respecting and accommodating differences, “removing the detriment but not the difference itself” (p. 733). This differs from formal equality, where the aim is to disregard characteristics and instead focus on equal treatment regardless of characteristics.

MacKinnon (2016) disagrees with Fredman’s (2016a) conception of substantive equality. She argues that most of the factors identified by Fredman as substantive “are as formal as they are substantive” because they can be flipped to be “as readily filled by dominant as by subordinate groups”, making them neutral between equality and inequality (MacKinnon, 2016, p. 741). She further disagrees with Fredman’s argument that substantive equality cannot be conceptualised by a single formula, and instead argues that “Social hierarchy

is its identifying principle” (MacKinnon, 2016, p. 741). Fredman (2016b) disagrees with this approach, arguing that social hierarchy is central to her conception of substantive equality and is encompassed within her first dimension regarding redressing disadvantage, but that “Hierarchy on its own cannot capture the interaction between... different directions of power” (p. 747). She further re-emphasises the need for the four-dimensional approach in order to “provide a significantly nuanced tool to detect the complex ways in which inequality of power occurs” and thus be able to address them (Fredman, 2016b, p. 747).

Despite the debate regarding the precise definition and construction of substantive equality and how it should be achieved in practice, the key theme emerging from the literature is that substantive equality moves beyond equal and symmetrical treatment. Instead of disregarding protected characteristics and ensuring that everyone is treated equally (as with formal equality), substantive equality recognises the value of diverse identities. It focuses on addressing the disadvantage associated with protected characteristics, recognising that unequal treatment may at times be necessary (Fredman, 2016a). Fredman (2016a) argues that the recognition under substantive equality that unequal treatment may be necessary to achieve equality in practice enables positive action to be reconciled with the right to equality. This will be discussed further in Section 2.10.1 below.

2.4 Sports Governance

This thesis does not focus on sports governance; however, it is important to provide a brief outline of key sports governance theories, particularly in relation to the autonomy of sport, in order to provide context to the discussion on the impact that this autonomy may have on the introduction of positive action policies within football.

Meier and García (2021) state that the autonomy of sport has been a “key issue” in the sporting arena, with sporting bodies and academic researchers investing “considerable effort in understanding the definitions and use of the

concept of sports autonomy” (p. 1). Foster (2019) argues that “Global sports law has developed an ideology that it is an autonomous legal order”, which has enabled sporting bodies “to claim effective immunity from review by national courts and enabled them to maintain a degree of self-governance that is arguably unrivalled among international organisations” (p. 1). This notion of autonomy aligns with Beloff’s (2012) discussion on the “specificity” of sport, the idea that its rules are far different than those for other areas of society and that this is accepted by national governments. Linking to this, Foster (2019) outlines how sports organisations have often successfully argued in court that “sport is special and that normal rules of law should be interpreted flexibly in their favour or even in some cases ignored completely” (p. 6). Foster (2019) further refers to the “uniqueness” of sports law, which has resulted in global sports law developing “its own norms and distinctive principles that are solely applicable to the sporting context” (p. 8). The specificity of sport has also been recognised by the European Commission (2016), who state that the term refers to “the inherent characteristics of sport which set it apart from other economic and social activities” (p. 3).

Meier and García (2021) argue that this idea of sports autonomy “found a very critical audience amongst legal scholars” (p. 3). They highlight Weatherill’s (2005) argument that the demand of sports bodies to autonomy “was mostly an attempt to avoid accountability” and Parrish’s (2002) definition of sporting autonomy “as an instrument to keep at bay regulatory interventions from institutions such as the Court of Justice of the European Union” (Meier and García, 2021, p. 3). They further point to a series of “governance failures”, including anti-doping, self-commercialisation and public re-regulation, which have “eroded the idea of sports autonomy” (p. 4). In light of the flaws of a solely autonomous approach, Foster (2000) outlines three potential models of sports governance: complete autonomy, direct public regulation, or supervised autonomy. Foster (2000) argues in favour of supervised autonomy. Supervised autonomy is based on the idea that because sports organisations have delegated authority, they need to behave responsibly and reach minimum standards of governance in order to maintain a degree of autonomy (Foster, 2000). This differs from a pure specificity or solely autonomous approach,

under which it is accepted that sport is 'different' and 'unique' and, as such, should be able to govern itself how it sees fit, even if this results in issues like discrimination becoming institutionalised in sport (Beloff, 2012). Instead, the supervised autonomy approach can be seen as "a middle ground where autonomy is subject to observing good governance and complying within the rule of law" (Meier and García, 2021, p. 3). Foster (2000) argues that self-regulation should only be permitted with three conditions. Firstly, that there is the option for a "compulsory independent appeal for those whose sporting and economic interests are prejudiced by the activities of sports federations" (Foster, 2000, p. 64). Secondly, that sports federations' constitutions are democratic, with representation of players and, finally, that fans are better protected (Foster, 2000).

Whilst supervised autonomy can be seen as a middle ground, Meier and García (2021) argue that this approach "does not offer a suitable theoretical framework to fully understand the complex relations between sport bodies and governments" which is a key consideration (p. 1). They argue that Foster's (2000) approach does not consider the different factors that might impact on the supervision and the relationship between the two sides. Instead, they advocate for an alternative approach, focusing on "collaborative governance theory as a conceptual framework to analyse the relationship between sports organisations and public authorities" (Meier and García, 2021, p. 1). The collaborative approach focuses on the relationships between organisations within different sectors that are required to collaborate. Meier and García (2021) argue that this approach is more dynamic, acknowledging that collaborations may not serve collective goals but "might be imposed on organisations" (p. 7). Their approach to studying collaborative sport governance includes considering the "socio-cultural context, political context, drivers of collaborations, collaborative process/dynamics, collaborative outputs, collaborative outcomes" (p. 10). Whilst they acknowledge that a collaborative approach "makes theorisation and generalisation more difficult", they argue that the strengths outweigh the weaknesses because it overcomes what they perceive as the key issue with autonomy: "its dichotomous approach" (Meier and García, 2021, p. 9). As such, they argue that those

studying sports governance and policy “should complement the use of sports autonomy” with collaborative governance approaches (Meier and García, 2021, p. 12).

As outlined above, this thesis does not focus on sports governance; however, it is important to consider the key conflicting theories in this area. Arguments concerning the extent to which sport should be able to act autonomously and govern itself may impact on the way in which positive action measures are received within football. For example, if a complete autonomy or supervised autonomy approach is favoured, this may mean that a measure developed by a governing body, like the EFL’s Recruitment Code, may be better received than a measure imposed by an ‘outside’ organisation.

2.5 Equality in Sport and Football

Shropshire (1996) argues that sport is “often considered a microcosm of society” (p. 456) and Oliver and Lusted (2015) argue that “sport reflects the wider social context” (p. 529) and thus is shaped by cultural practices, so discriminatory practices in the wider world will often be seen within sport. However, Beloff (2012) argues that the “specificity” argument (outlined above) means that sporting rules are far different than those for other areas of society and, in particular, the general principles of equality law. He argues that one of the key underlying principles of equality law is equality of treatment between sexes, but Section 195 of the Equality Act 2010 institutionalises discrimination in competitive sport (Beloff, 2012, p. 102), highlighting that the discrimination is “so deeply ingrained” (p. 103) that there are separate competitions for men and women in sports where there are no obvious physiological reasons to segregate, such as in table sports like snooker. This then has further implications for equal treatment between sexes, as “if a woman cannot play on a man’s team, the question of equal pay will not arise” (Beloff, 2012, p. 103). Beloff (2012) highlights the specificity of sport in relation to the other protected characteristics; such as the fact that sport is not considered to be included under the “normal day-to-day activities” (p. 103) aspect of the definition of

disability, and exceptions regarding age discrimination and selection on the basis of nationality.

Sport England (2000) however, argue that sport can play a key role in promoting inclusion and it can be argued that sport is often successful in promoting inclusion at least on-the-field. A particular example of this success is the proportion of professional footballers from BAME backgrounds: at around 25%, this is higher than the proportion of people from BAME backgrounds within a general population of 14% (SPTT, 2015, p. 2). Further, Beloff (2012) argues that it is generally accepted within football that both “home-bred and imported products are of all races and colours” (Beloff, 2012, p. 1).

2.6 Race Equality in Football

Lusted (2009) argues that “Despite its legacy of racist chanting and abuse in the professional game, English soccer is now increasingly promoted... as having a central role to play in challenging racism and increasing the involvement of ethnic minorities in British civic society” (p. 722). A consideration of the development of equality initiatives and anti-discrimination activity within the game can illustrate how football reached this level. Gardiner and Riches (2016) outline how “from the 1970s onwards, the participation of ethnic minority players, notably Black players or primarily Afro-Caribbean descent, has dramatically increased” (p. 103). However, Gardiner and Riches (2016) argue that despite this, “race discrimination and racial harassment have been recognized as specific problems in the context of football”, citing Weaver-Williams’ (1996) argument that BAME players “have historically been subject to a ‘racially hostile working environment’” (p. 104). They argue that there have been two main approaches to dealing with these issues. The first centres on using legislation, particularly anti-discrimination laws, aspects of criminal law and football-specific criminal legislation, in particular the Football (Offences) Act 1991 to deal with spectator racism (Gardiner & Riches, 2016). The second approach, they argue, focuses on the introduction of policy initiatives focused on education and awareness raising (Gardiner & Riches, 2016).

As Gardiner and Riches (2016) outline, there have been several policy initiatives aimed at tackling racism in football. In 2013, FIFA agreed a “Resolution on the Fight Against Racism and Discrimination” to implement a number of rules on a global level, including anti-discrimination officers inside stadiums during competitions and stricter application of sanctions and in 2019, doubled its minimum ban for racist incidents (Reuters, 2019). At national level, in 2014 the Football Association (FA) launched “English football’s inclusion and anti-discrimination action plan” (FA, 2018, para. 4) and in 2018 launched a three-year equality, diversity and inclusion plan called “In Pursuit of Progress” (FA, 2018), which focused on initiatives around gender and ethnicity through the general workforce, leadership positions and coaching within the England national teams. Further, in 2015, the Premier League launched the Premier League Equality Standard (PLES), providing a framework for embedding equality, diversity and inclusion for clubs, replacing Kick It Out’s Equality Standard (that in turn replaced the Racial Equality Standard) (Kick It Out, n.d., para. 4). The PLES operates alongside the No Room For Racism campaign and associated dedicated matchday fixtures. At EFL level, the “Code of Practice sets out key areas all EFL clubs should look to address to ensure they are inclusive across all areas of their business” (EFL, n.d. para. 3).

In 2020, following the killing of George Floyd and increased focus on Black Lives Matter, there was a renewed focus on the role that football plays in promoting racial equality, as well as the racial inequalities that still exist within the game. Premier League players from all 20 clubs issued a joint statement in support of “the singular objective of eradicating racial prejudice wherever it exists” (Premier League, 2020, para. 2) and Premier League and EFL players began ‘taking the knee’ prior to kick off, a move which has since been described as “at risk of being a mere match day routine” (Bankole, 2020, para. 1). Further, in November 2020, Greg Clarke resigned as chairman of the FA following use of the term “coloured footballers” whilst talking to the Department for Digital, Culture, Media and Sport select committee, as well as referring to

gay footballers as making a “life choice” and stereotyping BAME people within the FA and young female players (BBC Sport, 2020).

2.7 Coaches from a Black, Asian and Minority Ethnic Background within English Football

Despite the advances in on-the-field racial diversity within English football, there is still significant under-representation at coaching level. Annual reports published by the SPTT between 2014 and 2017 detailed the number of BAME coaches working within professional clubs. On 1st September 2014, 19 out of 552 (3.4%) coaches in senior positions (which includes First Team Manager, Assistant Manager and Head Coach, Reserves/Under 21s Lead Coach, Under 18s Lead Coach and Youth Academy Director) were BAME (SPTT, 2014) and on 1st September 2015, 24 out of 552 (4.2%) senior coaches were from a BAME background, with 80% of professional clubs not employing any BAME coaches in senior positions (SPTT, 2015). On 1st September 2016, 20 out of 493 (4.1%) senior coaching positions were held by BAME coaches; three out of 92 first team coaches were BAME (3.3%), and 17 out of 92 professional clubs (18.5%) employed BAME coaches in senior positions, with 25% of all BAME coaches employed at just two EFL clubs (SPTT, 2016, p. 9). In 2017, the proportion of BAME coaches in senior positions was 4.6% (SPTT, 2017).

The SPTT (2015) highlight how the proportion of BAME coaches in senior positions is “significantly lower” than the representation of BAME players (25%), the number of high-level qualified coaches (8.3%) and the general population (14%) (p. 2). They argue that this continuing underrepresentation shows that there has been little action to address the barriers to BAME manager and coach career progression identified within the report as: “access to and negative experiences of coach education courses; over-reliance on networks based methods of recruitment; conscious and unconscious racial bias and stereotypes; consequent lack of BME role models at all levels” (SPTT, 2014, p. 4). They further argue that these four barriers and the conscious and unconscious bias that results constitute institutional discrimination, which naturally limits the potential equality of opportunities and outcomes for BAME

coaches (SPTT, 2014). Similar findings emerged in research by Bradbury, van Sterkenburg and Mignon (2018) into the under-representation of elite level minority coaches in professional football in England, France and the Netherlands. In this research, the three main barriers to BAME coach career progression in the three countries were “limited access to and negative experiences of the high level coach education environment; the continued existence of racisms and stereotypes in the professional coaching workplace; and the over-reliance of professional clubs on networks rather than qualifications-based frameworks for coach recruitment” (Bradbury et al., 2018, p. 313).

In addition to this, research by Cashmore and Cleland (2011) on the views of 1,000 football fans on the underrepresentation of BAME coaches found that many fans believe there is entrenched institutional racism based on the stereotype type that Black players have a natural athletic advantage but are less able to cope with issues surrounding management and dictating policy. The fans questioned believe that these stereotypes are perpetuated by the fact that BAME coaches are not given opportunities to disprove them leading to further problems as they are then not able to access the “Old Boys’ Clubs” from which managers and coaches are often recruited (Cashmore & Cleland, 2011). Although this study may be limited in providing concrete evidence for the institutional discrimination, as it is the views of fans rather than people within the game, many within the game have alluded to similar problems; for example, former player and manager John Barnes stated: “The stereotype of a black man is that he is a good athlete, therefore, he should be able to run fast, box, sprint, play rugby, play football, we are athletic but can we think?” (BBC, 2004, para. 37).

Not all of the participants in Cashmore and Cleland’s (2011) study agreed with this, however, with some arguing that there is underrepresentation of BAME coaches and managers because they lack the necessary qualifications (p. 1598). This is supported by some literature; for example, Peters (2014) argues that the focus should be at grassroots level, using the positive action provisions of the Equality Act 2010 to encourage underrepresented groups to undergo

training courses and achieve coaching qualifications. However, this approach can be criticised. Currently there are positive action programmes in place within the FA, such as the Coaching Bursary Programme which funds coaching qualifications for BAME applicants, but as outlined above, the SPTT (2014) argue that there has been little action to address the systematic barriers to BAME coaching progression. In addition to this, the SPTT reports state that there is a higher proportion of high-level qualified coaches (8.3%) than there are working within senior coaching positions (4.6%), suggesting that, although more work may be needed to increase the number of BAME coaches on high-level coaching courses, those who are qualified are not being given employment opportunities (SPTT, 2014-2017). This idea appears to be supported by comments from people within the game, such as former player and current coach Michael Johnson, who said “I couldn’t get any more qualified. But I was out of work August 2011 to August 2015” (Gornall, 2015). It is worth noting, however, that since the SPTT report the FA appointed a BAME Manager, whose role will include increasing the number of BAME coaches and managers at elite level (FA, 2015).

In addition to the barriers outlined above, high-profile former managers have also spoken in the media about their experiences in management and coaching positions; for example, John Barnes (2020) argues that Black coaches “lose their jobs quicker than their white counterpart” (para. 2). However, research by the League Managers’ Association (2015) suggests that this perception may not be accurate, finding that the average tenure of a BAME manager is 1.31 years, compared to 1.23 years for all managers (p.13). Barnes (2020) further argues that Black managers are given fewer second chances, a perception which may be supported by the League Managers’ Association (2015) report finding that 64.3% of BAME managers have only managed once, compared with 49.1% of all managers who have only managed once (p.11). Further Black managers have also spoken in the media about the lack of opportunities for high-profile former BAME players, such as Les Ferdinand who “questioned why the likes of Sol Campbell or Paul Ince cannot take a high-profile managerial role with little experience when Steven Gerrard and Frank Lampard have done” (Cusack, 2018, para. 1).

2.8 The Rooney Rule in the NFL

Gardiner and Riches (2016) argue that one “radical approach” (p. 108) to addressing the underrepresentation of BAME managers and coaches within English football is to look towards the Rooney Rule from the NFL in USA Gridiron football. There are significant similarities between the barriers that BAME managers and coaches in English football face and the situation that existed within the NFL prior to the introduction of the Rooney Rule. Due to these similarities, and the similarities between the Rooney Rule and the EFL’s Recruitment Code (discussed in Section 2.9 below), it is important to review the literature regarding the Rooney Rule to provide further context to the EFL’s Recruitment Code.

The Rooney Rule was introduced following a campaign by two civil rights attorneys – Cochran and Mehri - who felt that the NFL’s hiring practises were discriminatory. They commissioned a report by Dr Madden, a labour economist, “to [analyse] the performance of NFL head coaches during the fifteen years between 1986 and 2001 and to compare the success of the five black head coaches... against the success of the eighty-six white head coaches” (Duru, 2008, p. 186). The report found that “by any standard, the black head coaches outperformed the white head coaches” but despite “superior performance” Black coaches received “inferior opportunities” (Duru, 2008, p. 186). They concluded that Black coaches were not necessarily ‘better’ than white coaches, but that the barriers involved meant that those who did make it were well equipped to succeed. With this information and the threat of legal action, the attorneys were able to convince the NFL that action was needed. A Workplace Diversity Committee, chaired by the Pittsburgh Steelers President Dan Rooney, was established in October 2002, and in December the same year it issued its recommendations. Amongst which, the Committee proposed that the NFL “make a commitment to interview minority candidates for every head coaching opening (unless the team had already made a prior commitment to hire a person from within its own staff)” (Proxmire, 2008, p. 1). After a series of discussions, the NFL accepted the Committee’s

recommendations, strongly agreeing “that any club seeking to hire a head coach will interview one or more minority applicants for that position” (Proxmire, 2008, p. 3).

Collins (2007) states that the Rooney Rule “effectively counters the principal reason for the significantly low percentage of minority head coaches in the NFL: unconscious bias” (p. 872). He argues that the NFL’s traditional hiring practices have allowed decision makers to avoid interacting with qualified African American coaching candidates, and as a result of this, they “rely on racial stereotypes depicting African Americans as natural born athletes whose success is attributable to their innate physical gifts rather than their hard work and intellect” (Collins, 2007, p. 872). The idea of racial stereotypes preventing African American coaches from being given chances is supported by much of the literature. Duru (2008) argues that African Americans are presumed to be naturally athletic but to have “intellectual frailty” (p. 181). He argues that whilst this impedes Black players, “it completely handicaps the black candidate pursuing a coaching position” (Duru, 2008, p. 181). Corapi (2012) argues that the stereotype of intellectual inferiority but natural athletic ability is maintained by the fact that African American players have disproportionately played in the so-called “workhorse” positions. Duru (2008) argues these positions demand more “physical ability than intellectual ability”, whereas the quarterback position – “the thinking and control position” is largely reserved for white players (p. 182). Collins (2007) argues that this means decision makers are likely to rely on the racial stereotypes as “most of their exposure to African Americans consists of interactions with athletes [stigmatised] by the image of the so-called “African American Athlete” (p. 875). In addition to this stereotype of “intellectually frailty” with regards to the coaching of players, the NFL has a significantly complex coaching structure with a larger number of players than most other sports, and Collins (2007) argues that it is unconsciously assumed that African American candidates are seen as less capable of handling this. As stated, because there were so few African American head coaches but a significant number of players, the racial stereotypes were maintained. An example of this, as stated by Collins (2007), is the fact that the head coach and/or starting quarterback of a team is seen as the “face of the franchise” who

must “[appeal] to team investors and fans”, and as the substantial majority of head coaches and quarterbacks are white, stakeholders are less familiar with African American leadership and such candidates were less likely to be selected (p. 883).

The maintenance of racial stereotypes is linked to the second problem identified within the literature that the Rooney Rule seeks to address: so-called “Old Boy” Networks. Collins (2007) argues that hiring practices within professional sports are “fraternal”, with lists of candidates drawn up from “Old Boy” networks, which “like many other social networks... often [leave] out African Americans” (p. 882). As the majority of decision makers and established coaches are white, they often do not have much contact with African American coaches and because of this, Shropshire (1996) states that when drawing up candidate pools, the coaches that are recommended generally will be white. As is the case with the racial stereotypes considered above, the existence of these “Old Boy” networks maintains the exclusion of African American coaches, as if they are not given an opportunity to coach at a high level, it will be very difficult to form networks with other coaches. Shropshire (1996) argues that many white coaches have relationships to positions of power, for example through family (particularly the sons of former coaches), but if African American coaches are not given the chance to become well-established, they will not be able to create these relationships. Because of this, Shropshire (1996) argues that when compared to the white coaches who have long-term long family connections with the sport, African American coaches seem unable to compare. This again excludes African American coaches from the “Old Boy” networks, continuing the problem.

Collins (2007) argues there is a “preference for safe, familiar coaching options” (p. 884) and this is supported by the previously-mentioned research into BAME association football managers and coaches in the UK by Cashmere and Cleland (2011), who found that “consciously or unconsciously [teams] desire to appoint someone who resembles a past manager/coach, who has brought success to their organization. Someone like Brian Clough, Bill Shankly or Alex Ferguson – all white” (p. 1599). They state that this is the sporting equivalent

of Gouldner's 'Rebecca Myth': that people sometimes resist a new boss in a position "once held by someone they knew and trusted... unless he conforms to their ideal" (Cashmore & Cleland, 2011, p. 1600). Collins (2007) argues that in the NFL this results in a Catch-22 that effectively excludes aspiring African American head coach hopefuls, because if they are rarely hired, they cannot break down this unfamiliarity.

The extent to which the Rooney Rule has been successful is debated. Those that believe it has been a success state the fact that, prior to the introduction of the Rooney Rule, 70% of NFL players but only 3 of 32 head coaches were minority ethnic (Cashmore & Cleland, 2011). By 2015, 17 of 87 vacancies (20%) had been filled by minority ethnic candidates (Fox, 2015), with minority ethnic candidates now 19-21% more likely to fill an NFL head coach vacancy than prior to the Rule's introduction (DuBois, 2015). The Rule has strict sanctions and there has only been one identified breach, occurring in 2003 shortly after its inception. In response to this breach, the Detroit Lions' General Manager was personally fined \$200,000; the then-Commissioner promised the next breach would result in a \$500,000 fine, showing the Rule had "teeth" (Duru, 2008). The statistics show that the numbers of African American coaches have generally climbed and whilst it can be argued to the extent to which this was attributable to the Rule, Duru (2008) argues that it has "undoubtedly played a role" (p. 195). Although Proxmire (2008) argues that the Rooney Rule has made only slow progress, he does state that it has caused each team looking to fill the role "to make extensive contact with a minority candidate who may impress the decisionmakers" (p. 6), and if they are not selected for this role, may be considered for future positions, helping them to break into the networks (p. 6). Further, as interviewing a minority candidate is mandatory under the Rule, this helps to stop the reliance on "Old Boy" networks.

Much of the literature agrees that the Rooney Rule does help to overcome the problems caused by both racial stereotypes and "Old Boy" networks, thus resolving the Catch-22 situation. The Rule requires that teams grant a minority candidate a 'meaningful' (face-to-face and in person) interview, and although

Duru (2008) states that a criticism of the Rule is that it cannot require the team to grant meaningful consideration, he argues that often “a face-to-face, in person, interview with an [organisation’s] primary [decision makers] begets meaningful consideration” (p. 195), as sitting down together and discussing a common interest can help to overcome any racial stereotypes or prejudice that decision makers may hold, showing how the Rule can be seen as a success. Collins (2007) appears to agree with this, arguing that the Rooney Rule forces decision makers to confront their own prejudices. Supporting this, research by Celis, Hays, Mehrotra and Vishnoi (2020) found that the Rooney Rule “enables a significantly faster reduction in implicit bias” (p. 1).

Corapi (2012) places the viewpoints on the success of the Rule into three categories: those that think it has worn out its utility; those that believe it has always been flawed and should never have been implemented, and those that support its continued use (as discussed above). With regards to the first category, Corapi (2012) states that many believe the Rule is no longer needed as “the playing field is getting even faster than [some] thought possible” (p. 367) and minority coaches are now likely to be rehired even after being terminated as head coach, arguing that NFL team owners are now more likely than ever before to hire a minority coach due to the recent success of minority coaches. He argues that the most salient point is that NFL team ownership is growing younger and these owners are more likely to recruit through fairer practices because they have grown up in a time “where discrimination and racism are considered socially unacceptable” (Corapi, 2012, p. 369). Although Corapi (2012) highlights those who believe the Rule is no longer necessary because of its success, the literature shows there are those who believe that it should be repealed because it is no longer working; for example, Graves Jr. (2013) argues that “owners of the 32 NFL franchises have essentially disregarded the Rooney Rule” (p. 10) because of the disparity that still remains.

Corapi’s (2012) second category concerns those that believe the Rule is flawed and should never have been implemented, and it can be argued that there is some empirical research to support this. Solow, Solow and Walker

(2011) carried out a statistical analysis of data from 1970 to 2009 to explore the extent to which race is a factor in NFL teams' decisions to promote assistants to head coach. They concluded that, once a coach reaches the status of a high-level assistant coach, and controlling for other factors such as age, experience and performance, "there is no evidence that race influences head coach hiring decisions", no evidence that the Rooney Rule has had any influence and no statistically significant links found (Solow et al., 2011, p. 332). This can be seen as a clear criticism of both the need for and the success of the Rooney Rule; however, it is important to point out that promotion of this type is dependent on African American coaches reaching assistant coach level, which the researchers themselves highlight as "still relatively rare" (Solow et al., 2011, p. 337). This shows that the Rule may still be necessary to increase representation at this level. Solow et al. (2011) argue that focusing on the numbers of African American players compared to the numbers of coaches may be misleading, as they state it "does not follow" that this disparity shows players are prevented from moving into coaching because "playing experience is neither a necessary nor a particularly common qualification for coaching in the league" (p. 333). Proxmire (2008), however, states that it is important for "managerial leadership [to] reflect the diversity of the workforce" (p. 1) thus it can be argued that the fact that playing experience is not a common qualification may be irrelevant. Despite the disagreements regarding its success, there is a general consensus that, at the very least, the Rule is a "valuable statement of league goals" (Solow et al., 2011, p. 337).

In May 2020, following "another hiring cycle where minority candidates were significantly bypassed", the Rooney Rule was expanded to require NFL teams to interview at least two minority candidates for head coaching positions, as well as one minority candidate for co-ordinator positions (Patra, 2020, para. 2). The Rule was also expanded to include women applying for positions including "president, communications, human resources, legal, football operations, senior executives of finance, sales, marketing, sponsorships, information technology and security positions" (Strackbein, 2020, para. 7).

2.9 The EFL's Recruitment Code

Given the Rooney Rule's apparent relative success in combating barriers similar to those "institutionally embedded" in English football (SPTT, 2017), for several years there were widespread calls for a version of the Rooney Rule, used within the NFL in the USA, to be introduced into English football. Calls for an 'English Rooney Rule' were made by notable BAME players and managers, including Paul Ince (Ornstein, 2014), Jason Roberts (BBC, 2014a) and Sol Campbell (Brown, 2015). Key organisations campaigned for its introduction for several years: the Professional Footballers' Association (PFA) began discussions with Cyrus Mehri (instrumental in developing the NFL's Rule) in 2011 (Kick It Out, 2011) and Kick It Out have long been supporters of such a Rule (BBC, 2014b).

Whilst there had been calls for the introduction of the Rule into English football for some time, this dialogue gained steam in 2014, when the EFL came under mounting pressure to act. The then-EFL Chairman Greg Clarke was heavily criticised for failing to raise the issue at the 2013 Annual General Meeting, despite assurances he would do so; although he claims this was due to changes to the EFL Board (Ornstein, 2014). This led to claims by PFA Chief Executive Gordon Taylor that the EFL had failed to fulfil its promise (Conway, 2014), and Garth Crooks, a long-term campaigner for the introduction of the Rule, called on Clarke to resign (Ornstein, 2014). Considering that until this point the EFL had failed to act, arguably this wider pressure on both the EFL, and Clarke personally, led to the issue being raised at the 2015 AGM, where clubs agreed formal action should be taken (EFL, 2015).

The EFL's initial proposals (summarised below) consisted of a Mandatory Recruitment Code for academy football, which was immediately rolled out to all 72 clubs, and Voluntary Recruitment Code for first-team football, to be trialled by ten teams (EFL, 2016).

The Mandatory Recruitment Code for academy football provided that clubs must:

- Advertise any position within the club's Academy that requires the individual to hold a UEFA A or UEFA B coaching badge on the club's website and the EFL website for a minimum of 7 days;
- Include at least one suitably qualified BAME candidate (where an application has been received) on the interview shortlist for that position;
- Appoint the successful candidate on the basis of merit alone;
- Provide details of the recruitment process to the EFL, including the number of BAME applicants and the number of BAME candidates interviewed. (EFL, 2016)

The Voluntary Recruitment Code for first-team football involved the following:

- During the season, clubs will be expected to interview one or more BAME candidate for any First Team managerial/coaching role (where an application has been received) in instances where they run a full recruitment process;
- During the close season, clubs will be expected to run a full recruitment process for any First Team managerial/coaching role during which they must interview one or more BAME candidates (where an application has been received). (EFL, 2016)

At the 2016 AGM, clubs gave their formal support to these proposals, which were introduced for the 2016-17 season (EFL, 2016).

There was a lack of detail provided on how this pilot scheme would be monitored and whether there would be sanctions for non-compliance. During the pilot, the Recruitment Code came under criticism, particularly when

Wolverhampton Wanderers FC “completely failed to follow the process in appointing Walter Zenga” (SPTT, 2016). In total, the Recruitment Code was not followed five out of a possible eight times (Slater, 2017). This raised questions around the lack of monitoring and evaluation of the Code, and the lack of sanctions for non-compliance (SPTT, 2016), particularly when compared to the Rooney Rule in the NFL where the one failure to follow the Rule resulted in significant penalties. Birmingham City, who did not interview a BAME candidate on two occasions, said they “abided by the agreement”, as the Code is only required when clubs run a full recruitment process, thus still allowing clubs to select a specific manager (Slater, 2017). This further highlights the differences between the EFL’s Voluntary Code and the Rooney Rule, with the latter required to be followed in all circumstances.

Then Chair of Kick It Out, Lord Ouseley, stated the pilot showed clubs had “got away with doing nothing to achieve fair outcomes” (Slater, 2017, para. 20). Despite this criticism, the EFL found the pilot “useful in terms of understanding the practicalities” of the Code (EFL, 2017a, para. 4), eventually stating that they believe “this approach has the potential to deliver the right outcomes if operated by all clubs over a period of time” (EFL, 2017b, para. 9). Therefore, it was announced all 72 clubs had agreed to follow the Voluntary Code from 1st January 2018 to the end of the 2018/19 season (EFL, 2017b). In June 2019, following the trial, the commitment to interviewing at least one BAME candidate was formalised in the form of “a new Regulation ensuring that the principle of providing more opportunities to BAME candidates is mandatory when Clubs consider multiple applicants for a role” (EFL, 2019).

The Recruitment Code for academy positions is now contained within Paragraph 115 of the EFL’s Rules and Regulations and states that any club recruiting for a Specified Role shall:

115.1.1 comply with any guidelines issued by The League from time to time regarding appropriate monitoring of applications including from Minority Candidates;

115.1.2 publicly advertise the vacancy for a period of not less than seven days, including on:

(a) the Club's official website; and

(b) by passing a copy to The League for it to display on The League's website and the Football Association's 'licensed coaching club website';

115.1.3 where any application is received from any Minority Candidate(s), invite one or more Minority Candidate(s) to interview for that Specified Role. (EFL, n.d., para 115).

Paragraph 116 covers first-team football and states that:

116.1 Where a Club seeking to appoint a Manager:

116.1.1 operates a recruitment process (which, for the purposes of this Regulation, involves any process of shortlisting of candidates and the interviewing [of] more than one candidate); and

116.1.2 an application is received from any Minority Candidate(s), that Club shall invite one or more Minority Candidate(s) to interview for the role of Manager.

116.2 Clubs shall provide reports in such format and at such times as The League requires relating to their compliance with the provisions of this Regulation. The League shall be entitled to publish anonymised data derived from those reports. (EFL, n.d., para 116).

Due to the relatively recent introduction of the EFL's Recruitment Code, at present academic literature on the Recruitment Code and its impact is limited. However, the SPTT (2016) described the introduction of the Recruitment Code

as “unprecedented progress” (p. 4) but referred to the lack of adherence by Wolves to the voluntary Recruitment Code at first-team level as a “clear breakdown of the code” (p. 4) which undermines the initiative. The SPTT (2016) further raised questions around the monitoring and evaluation of the Recruitment Code and to whom the clubs are accountable. They argue that “an independent body should exist to monitor progress and, if necessary, make a case for action against those who do not follow the recruitment procedures”, without which “the code will not be given the chance to succeed” (p. 4). In their 2017 update, the SPTT (2017) described the implementation of the Recruitment Code for academy and first-team football as “cause for cautious optimism” (p. 9), describing the Recruitment Code at academy level as “likely to yield some positive incremental outcomes” (p. 9). However, they again criticised the apparent lack of monitoring and enforcement processes and stated that the Recruitment Code at first-team level is “arguably undermined in its capacity to [achieve results] by a series of embedded caveats in its wording” (p. 10), stating that the Recruitment Code at first-team level is “‘optional’ rather than ‘must do’” (SPTT, 2017, p. 10). A report by McGurk, Henry, Moore and Seeraj (2019) into the EFL’s Recruitment Code produced similar findings. McGurk et al. (2019) argue that whilst it is too early to determine the effectiveness of the Recruitment Code in increasing BAME representation in senior club positions, “there is evidence to suggest rapid early improvements in recruitment and selection processes in response to industry regulation and Board-level commitment to change” (p. 3). They argue, however, that these improvements are “largely limited to youth academy and off-field roles in the lower leagues, while higher-profile first team appointments look likely to remain immune” from the EFL’s Recruitment Code (McGurk et al., 2019, p. 3). McGurk et al. (2019) outline a series of recommendations to increase the success of the EFL’s Recruitment Code, including relaunching the Code as “compulsory ‘Inclusive Shortlisting’” (p. 4), introducing monitoring, incentives and sanctions, commissioning research into managerial turnover. They also encourage the EFL to “Lead a national campaign to change the law to permit ‘threshold selection’” (p. 39), enabling clubs to take the race/ethnicity of BAME managers and coaches into consideration as a selection criterion for

senior appointments. A further consideration of the EFL's Recruitment Code in light of the threshold requirement can be found within Chapter Seven.

Similar to the above findings, research by Conricode and Bradbury (2020) into the effectiveness of the Recruitment Code at academy level found that it caused a strongly positive impact in increasing the number of appointments of BAME coaches within academies. They state that 97% of all BAME applicants were shortlisted for interview during the 2016-17 season, and that BAME coaches "accounted for almost one-half (49%) of all new coaching appointments" (Conricode & Bradbury, 2020, p. 220). However, they argue that for the "initial operational adherence to and effectiveness of the mandatory code to be advanced and expanded over time" (Conricode & Bradbury, 2020, p. 229), the EFL should take a more holistic approach in order to change attitudes and secure buy-in, which should include cultural awareness training and the production of good practice checklists and guides (Conricode & Bradbury, 2020). This aligns with Bradbury's (2013) view that positive action initiatives within football can be made more successful when introduced as part of a "holistic package" (p. 311), which includes "cultural awareness and anti-discrimination training which specifically targets senior administrators, directors and executive committee members" (p. 314).

It should be noted that since the commencement of this research, similar rules focusing on guaranteed interviews for BAME candidates that meet the minimum criteria have been introduced at additional levels in football. In 2018, the FA introduced a measure requiring at least one BAME candidate that meets the minimum criteria to be interviewed for national team positions (Associated Press, 2018). In June 2020, the Guardian reported that the Premier League had "no plans to follow the Football Association and Football League in implementing the Rooney Rule" (Ames & Steinberg, 2020, para. 1). However, in October 2020, the FA launched the Football Leadership Diversity Code, which includes specific hiring targets as well as the requirement to interview at least one suitably qualified male and one suitably qualified female BAME candidate (FA, 2020) and the "Premier League and multiple clubs from across the Premier League, EFL, Barclay's Super League and FA Women's

Championship” (FA, 2020, para. 7) adopted this Code as founding signatories. Whilst these measures are now in place and the researcher is involved in the implementation of this within one Premier League club, this research focuses specifically on the EFL’s Recruitment Code, outlined above, a form of positive action aimed at increasing the representation of BAME professional managers and coaches.

2.10 Legal Context

2.10.1 Defining and Conceptualising Positive Action

The EFL’s Recruitment Code can be considered an example of positive action and as such, it is important to consider the literature regarding positive action more generally. When considering what is meant by “positive action”, commentators do not appear to agree. McCrudden (1986) argues that there are five types of action that fall under the title of positive action, “not in the sense of what is legally permissible, but in the sense of how the term appears to be used in common parlance” (p. 223). The first is “eradicating discrimination”, which involves “identifying and replacing discriminatory practices, especially those which have the effect of disadvantaging one group more than another and are not “justifiable”” (p. 223); such as word of mouth hiring. McCrudden (1986) argues that eradicating discrimination is the only type of positive action to have become well known in Britain. The second form identified is “facially neutral but purposefully inclusionary policies” (p. 223), whereby organisations seek to increase the proportion of members of an underrepresented group by using facially neutral criteria, such as advertising to those who live in a particular geographical area. This does not identify group membership as a necessary criterion but there may be a large proportion of one protected group who live in that area.

The remaining forms of positive action take account of “group membership in the allocation of benefits” (McCrudden, 1986, p. 223); for example, the third form is “outreach programmes” which “attract candidates from the previously underrepresented group” (p. 224) and can either consist of bringing

employment opportunities to the attention of members of a protected group or providing them with extra training. A further form is “preferential treatment in employment... where racial or gender preferences are adopted”, which is “what has sometimes been called reverse discrimination” (McCrudden, 1986, p. 224). McCrudden (1986) argues that the use of this form of positive action varies widely: in some instances it may apply only to hiring, but in others it could also include promotion and redundancy; in some scenarios the protected characteristics may be merely a relevant consideration and in others the sole consideration. The final type of positive action is “redefining “merit”” (McCrudden, 1986, p. 225), whereby a protected characteristic is considered to be a relevant qualification necessary for the job.

Selanec and Senden (2013) also attempt to categorise positive action in a way that has been commended within the Equality and Human Rights (EHRC) report for its “clarity and comprehension” (EHRC, 2019, p. 27). They categorise positive action as follows using sex as an example:

An absolute preference reserves certain benefits exclusively for members of the underrepresented sex. *A strong preference* grants advantage to members of the underrepresented sex who satisfied some minimum eligibility criteria for a particular position. *A tie-break preference* grants an advantage to members of the underrepresented sex who are equally qualified for a particular position or equally deserving of particular benefit... *Flexible preferences* allow granted sex-based advantages to be overridden by some other socially valuable reason (e.g. long-term unemployment, single parenthood, health reasons, etc.) ... *A weak preference* merely allows for sex to be one of various criteria of selection, each of which is of more or less equal weight. (Selanec & Senden, 2013, pp. 4-5).

Barnes (2009) argues in favour of a more abstract definition of positive action, disagreeing with McCrudden’s (1986) conceptual approach, arguing that it is limited in that it does not leave scope for future measures yet to be developed and that it means certain activities will automatically be considered positive

action when this might not be appropriate. Barmes (2009) therefore defines positive action as an “activity designed to improve the position, in terms of the distribution of benefits or dis-benefits, of a given social group or sub-group... on the basis that its members suffer systematic disadvantage in that regard” (p. 623). Idris (2009) appears to take a similar view to Barmes, stating that “it is useful to describe positive action strategies as non-static and non-exhaustive because it covers a huge range of policies and measures” (p. 54), which differs from McCrudden (1986) who suggests an exhaustive list. Despite the specific differences in approach, there is a general agreement within the literature that positive action surrounds the provision of benefits to a disadvantaged group (Idris, 2009). The EHRC (2014) appears to support the more abstract approach taken by Barmes (2009) and Idris (2009), as they define positive action as “steps that... an employer can take to encourage people from groups with different needs or with a past track record of disadvantage or low participation to apply to jobs” (p. 38). In light of these definitions, it is clear to see how the EFL’s Recruitment Code can be considered a form of positive action conceptually, as it takes steps that are “designed to improve the position” (Barmes, 2009, p. 623) of BAME managers and coaches in light of the disadvantage that they face and their continued underrepresentation within the EFL.

In addition to the difficulties surrounding the definition of positive action, many commentators highlight the difficulty in reconciling positive action provisions with the general key principles of equality law, as positive action can cause controversy (O’Cinneide, 2012). Burrows (2010) states that “Positive action is a difficult concept... Equal treatment assumes that two individuals should be treated in a similar way without reference to any characteristic that acts as a disadvantage to one individual and not to the other” (p. 4) and so the use of positive action, whereby an individual’s protected characteristic is a key consideration, appears to contradict this. Wokes (2004) agrees with this, stating that “‘Preferential treatment’ is a morally impermissible social policy because it violates the principle of equality” (p. 128). Wokes (2004) argues that for each projected utility of preferential treatment, there are possible difficulties which outweigh the benefits; for example she states that one key argument in

favour of positive action is based on the concept of role models - that having members of protected groups in key positions will serve as examples to members of their community - but she supports the view of Thomas (1993) that this comes “dangerously close to implying that the only thing a black can teach a white is how not to be racist” (Wokes, 2004, p. 132).

The idea of positive action being morally impermissible because it violates the principles of equality can be criticised, as seen in Section 2.3. above. Burrows (2010) outlines how the concept of equal treatment assuming that individuals should be treated equally without reference to any particular characteristics “[fails] to take into consideration the realities facing disadvantaged groups”. In addition to this, Idris (2009) states:

Contrary to the perceived conflict... a careful construction of the conceptual framework of preferential treatment can [legitimise] its use and illuminate its true value in enhancing greater equality... greater equality is desirable for the betterment of society as a whole and as such, preferential treatment is invaluable – perhaps even necessary in some cases. (p. 45).

The approach taken by Burrows (2010) and Idris (2009) in this regard may be more realistic in practice. Whilst the end goal may be for protected characteristics to not be considered within employment as Wokes (2004) argues, the lack of representation in many areas shows that this position has not yet been reached, and a failure to take into account the protected characteristics of disadvantaged groups would not help to reduce the imbalance.

Furthermore, Noon (2010) has identified key objections to or criticisms of positive action, which were summarised within the EHRC (2019) report into the use of positive action in apprenticeships as “arguments of reverse discrimination, tokenism and undermining meritocracy” (p. 35). Manfredi (2017) argues against Noon’s key identified objection that positive action tries to remedy underrepresentation “by using reverse discrimination... but “two

wrongs” do not make a right” (p. 6) by arguing in favour of the substantive model of equality discussed in Section 2.3 above, which “encompasses both the idea that equality should be seen as a means of breaking the cycle of disadvantage suffered by some groups” (p. 6). This aligns with Fredman’s (2005) argument that “formal equality, with its focus on the abstract individual has failed to address deeply entrenched patterns of social disadvantage” (p. 163). Fredman (2005) outlines how formal equality “insists that... group-based characteristics are irrelevant; and seeks to replace their use in allocative decision-making by merit-based criteria” (p. 165). However, Fredman (2005) argues that this formal model does not recognise the impact of past discrimination on underrepresented groups and that opportunities may continue to be limited and affected by protected characteristics. Similar to Manfredi (2017), as outlined above, Fredman (2005) thus argues in favour of a substantive model of equality, which focuses on the associated disadvantage caused by group characteristics, rather than the group characteristic itself. This further aligns with Barmes’ (2009) view that “systematic inequalities have persisted in the UK, indeed in some cases deepened, notwithstanding legal and other interventions to reduce them” (p. 626) and so positive action is needed to overcome these inequalities. This is supported by the fact that within the Government’s Standard Note SN/BT/6093 “The Equality Act 2010 and Positive Action” it is suggested that the “focus of positive action might be to redress systemic, historical or institutional discrimination in order to promote diversity” (Jarrett, 2011, p. 3), again illustrating how positive action aligns with the substantive model of equality.

Furthermore, O’Cinneide (2012) argues that whilst the use of anti-discrimination law which prohibits direct or indirect discrimination has success in that it allows individuals to bring legal actions, using anti-discrimination law to eliminate systematic inequalities “may only be capable of bringing about a limited amount of social change” (p. 2) and it cannot stop discrimination where there is no clear evidence that it occurred. As a result, he argues that “positive action is a very important tool in the fight against discrimination and disadvantage” (O’Cinneide, 2012, p. 25), in line with the approach taken by Barmes (2009) and Idris (2009). This again shows how positive action can be

reconciled with the general principles of equality law, as it helps to enhance equality and bring about change within society as a whole. It is important to state here that much of the criticism regarding preferential treatment as a concept concerns the use of positive discrimination, which is “recruiting or promoting a person solely because they have a relevant protected characteristic” and/or the use of quotas (Jarrett, 2011, p. 3). However, “although they are often confused or used synonymously” positive action and positive discrimination do not mean the same thing, and positive discrimination is almost always unlawful (Jarrett, 2011, p. 3).

2.10.2 Domestic Legal Development

Prior to the introduction of the Equality Act 2010, the British positive action provisions “were increasingly out of step, both legally and conceptually, with the developing more permissive EU framework” (Davies & Robison, 2016, p. 86). The Sex Discrimination Act 1975 (Section 47) and the Race Relations Act 1976 (Section 37) essentially only permitted organisations to provide extra training facilities for protected groups or encouraging them to take advantage of opportunities where there were no people from that protected group doing the work or the proportion of people doing the work was small in comparison to the numbers of people in that group in Great Britain. Barmes (2009) argued that this was very restrictive and “prohibited and discouraged measures targeted at correcting systematic inequality that [were] both perfectly sensible and that [did] no harm to sufficiently justify legal proscription” (p. 627). During the consultation period prior to the introduction of the Equality Act 2010, there was pressure both internally and from within the EU for the British domestic law to be brought in line with the broader EU approach (Davies & Robison, 2016). As such, and as outlined in the Explanatory Notes of the Act, the positive action provisions of the Equality Act 2010 (Sections 158 and 159) were introduced to extend “what is possible to the extent permitted by European law”, with the Explanatory Notes further stating that Section 158 should “be interpreted in accordance with European law” (Explanatory Notes, paragraph 512). Accordingly, this literature review provides a narrative of both the European and Great Britain legal framework on positive action, with Section

7.2 in Chapter Seven analysing the EFL's Recruitment Code in light of this framework.

2.10.3 European Context

Article 141(1) EC Treaty and Article 2(4) of Directive 76/207/EEC (equal treatment for men and women) permitted the introduction of positive action measures within employment on the grounds of sex. Specifically, Article 141 stated that "the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex", with Article 2(4) of the Directive providing that "This Directive shall be without prejudice to measures to promote equal opportunity for men and women". This permissive approach to positive action was later reflected in relation to race by Article 5 of the Race Directive, which extends beyond employment, and Article 7(1) of the Framework Employment Directive (2008/78/EC) in relation to age, disability, religion or belief and sexual orientation (Davies & Robison, 2016). Further, Article 3 of the Recast Directive (2006/54/EC) amended the Equal Treatment Directive, implementing Article 157(4) of the Treaty on the Functioning of the European Union, which states:

With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. (Article 157(4), Treaty on the Functioning of the European Union).

Despite there being no "standardised Community/Union approach towards positive action", a body of European jurisprudence has emerged that sets out boundaries in this area (Davies & Robison, 2016 p. 87). It is important to note that whilst the key cases in this area concern the protected characteristic of sex, they are equally applicable to an interpretation of the Race Directive, as

the ECJ judgements illustrate the law generally and Article 5 of the Race Directive reflects the law on sex. In the key case of ***Kalanke v Bremen [1995] ECR I-3051*** (Kalanke) the ECJ ruled that measures which guaranteed women absolute and unconditional priority for appointments and promotions in underrepresented areas went beyond the limits of the exception provided by Article 2(4). Two years later, in ***Marschall v Land Nordrhein Westfalen [1997] ECR I-6363*** (Marschall), the European Court of Justice softened its approach, finding that “preferential treatment in a tie-break situation where female candidates for promotion were equally as qualified as male candidates in sectors where they were underrepresented” did fall within the scope of Article 2(4), providing that there is an objective assessment of all criteria (Davies and Robison, 2016, p. 87). This appears to be the limit set by the ECJ, which in ***Abrahamsson v Fogelqvist [2000] ECR I-5539*** (Abrahamsson) found that measures which automatically allocated positions to the underrepresented group were not permitted, confirming that tie-breaks will be permitted “only where candidates possess equivalent merits and subject to an overall test of proportionality” (Davies & Robison, 2016, p. 87). This suggests that a measure which excludes an individual because of a protected characteristic, even if part of a positive action scheme, would be considered disproportionate and thus take the measure outside the scope permitted by European law. In light of this ECJ jurisprudence, Connolly (2011) thus argues that for a positive action measure to fall within the ambit permitted by EU law, there must be: underrepresentation; the candidates must be equally qualified, and there must be a savings clause which requires an objective assessment of all criteria specific to the individual candidates. However, there is some debate around the interpretation of the EU jurisprudence as some, such as Selanec and Senden (2013), argue that the European framework actually permits a threshold approach. This would mean that a candidate could benefit from a positive action measure if they reach a threshold of being “sufficiently” qualified, rather than needing to be “as qualified as” a candidate not from the underrepresented group. This would allow employers to consider less-traditional qualifications and instead look to things like potential.

It is important to acknowledge here the impact of the UK's triggering of Article 50 of the Treaty on European Union and subsequent withdrawal from the European Union. As outlined above, the positive action provisions of the Equality Act 2010 were introduced to bring UK domestic law in line with the European framework. As such, if the UK is no longer bound by European law, the UK may adopt a different approach towards positive action; for example, the Young Women's Trust ('YWT') (2018) argue that the UK "could adopt a more robust or 'radical' approach", it "could choose to maintain the current legislative framework" or it may consider re-evaluating the positive action provisions, particularly Section 159, due to "its commitment towards breaking down unnecessary legislation in relation to employment" (p. 30).

2.10.4 Domestic Legal Framework

Positive action in Great Britain is covered by Sections 158 and 159 of the Equality Act 2010. These Sections were introduced to extend what is permissible in Britain "to the extent permitted by European law", with the Explanatory Notes stating that Section 158 must "be interpreted in accordance with European law" (Explanatory Notes, para. 512). Sections 158 and 159 Equality Act 2010 "extended the circumstances in which positive action may be taken in respect of protected groups" but still do not permit the use of positive discrimination (Davies, 2015, p. 2). Davies (2015) states that "the existing positive action provisions for the individual protected characteristics were, to some extent, transposed into s. 158 of the Equality Act 2010" (p. 2). Section 158 applies where a person reasonably thinks that:

- (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
- (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
- (c) participation in an activity by persons who share a protected characteristic is disproportionately low. (Section 158, Equality Act 2010)

The Act then allows employers to take action which is a proportionate means of achieving the aim of: enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage, meeting those needs, or enabling or encouraging persons who are the protected characteristic to participate in that activity. Davies (2015) states that “whilst the previous legislation had been based on an accepted “equality of opportunity” (p. 2) approach, the new Section 158 could be seen as a broadening out of positive action moving towards an “equality of results” approach”; for example, minimising disadvantage or encouraging people from protected groups to participate concerns the end result far more than the previous legislation which centred around encouraging people to take advantage of opportunities.

Section 159 permits organisations “to utilise preferential treatment in the form of “tie-break” provisions in recruitment and promotion” (Davies, 2015, p. 2); it allows employers to take a candidate’s protected characteristic into account when offering employment or promotion and a candidate from a protected group can be favoured over another candidate where: the candidates are as qualified as each other, the employer “reasonably thinks” the protected group is at a disadvantage or is under-represented; the aim of the action is to encourage or enable protected groups to overcome the disadvantage; it is a proportionate means of achieving the aim, and there is not a policy of automatically treating protected groups more favourably.

Although some commentators argue that extending the positive action provisions in this way is a significant step towards eradicating systematic discrimination and advancing diversity, Section 159 was a particularly controversial draft clause (Robison, 2015), with some commentators believing that the tie-break provision is a step too far, moving away from positive action towards positive discrimination. Johns, MacBride-Stewart, Powell and Green (2013) argue “the tie-break criterion more closely represents a radical approach to equality, which is understood as positive discrimination” (p. 104). They argue that positive action does not extend to helping individuals over the finish line, and as in their view the tie-break does this, it cannot be considered

a form of positive action (Johns et al., 2013). They state that “this presents a significant problem because it then falls outside the legitimate normative space created within UK legislation for positive action”, maintaining that “if the “true” nature of the tie-break was widely understood by the British public there would be very little support for its aim of positive action” (Johns et al., 2013, p. 100).

Johns et al. (2013) do however also argue that the tie-break provision is not full positive discrimination but a “watering down” as it does invoke merit, concluding that it is more a change in the understanding of the concept of merit, so that identity is included as well as ability and effort (p. 109). They argue that using this approach to achieve equality “is presently neither feasible in practice nor politically expedient” (p. 109). This view can be criticised, however, for focusing too heavily on the distinction between equality of opportunity and equality of outcomes, as Idris (2009) states that there is no need to “draw a definitive line between the two formulations of equality because of the inseverable link between them. To a very large extent, outcomes are dependent on opportunities and processes while opportunities can also depend on outcomes” (p. 47). As stated above, Idris argues in favour of positive action because of the benefit to society as a whole, and this seems a more realistic approach as criticisms based on the political expediency seem futile considering the tie-break was introduced through legislation.

In addition to the controversy surrounding the concept of the tie-break, commentators have also criticised the drafting of the provision within s.159. Barmes (2010) has described the wording of the Section as “disappointingly muddling”; for example, it leaves “it to [organisations] to work out what degree of disadvantage or under-representation was sufficient to render [that] kind of positive action justifiable” (p. 15). She describes the requirement that organisations do not have a policy of favouring a protected characteristic “bizarre” as it envisages organisations basing decisions on protected characteristics in an ad hoc way but having “previously identified systematic disadvantage or under-representation” (Barmes, 2010, p. 15). In addition to this, Burrows (2010) argues that there will be problems with determining whether two candidates are “as qualified as” each other, and as such

employers will have to “be careful in drafting person specifications for particular posts so that they are able to come to a view on comparability of qualifications” (p. 5). The difficulty surrounding the provisions can perhaps suggest why, despite attempts to encourage the use of positive action measures, there is limited evidence that this has been achieved (Robison, 2015) and “organisations prefer to steer clear of this opportunity to address disadvantage suffered by protected groups” (Davies and Robison, 2016, p. 83).

Domestic case law on the use of positive action under Sections 158 and 159 of the Equality Act 2010 is very limited; however, “there have been two interesting low level judgements exploring” this (EHRC, 2019, p. 32). In the non-employment case of ***R (on the application of Z and others) v (1) Hackney London Borough Council (2) Agudas Israel Housing Association [2019]*** (AIHA), the High Court found that a positive action measure which allocated social housing properties to members of the Orthodox Jewish community that accommodated larger families and thus reduced the risk of eviction for such families was proportionate due to the level of disadvantage that the community faces and the fact that it did not constitute a blanket policy. This decision was upheld by the Supreme Court in October 2020. The second case, ***Mr M Furlong v The Chief Constable of Cheshire Police: 2405577/2018*** (Furlong), considered the use of Section 159. The case concerned a white, heterosexual man without a disability, who was unsuccessful in securing a position with the Cheshire Constabulary despite successfully completing the assessment centre and interview stages of recruitment. The respondents argued that they had utilised the Section 159 tie-break in favour of candidates from underrepresented groups. However, the Tribunal held that whilst there was evidence of underrepresentation amongst the groups that were favoured, the tie-break requirement was found to be “artificially low” (para. 32), meaning that “substantial numbers of candidates had been deemed equal when they clearly were not in order for a preference to be applied in favour of those from the underrepresented communities” (EHRC, 2019, p. 33). Further, the measure in question was found to constitute a blanket approach and thus also failed on proportionality. This meant that the

respondents' argument regarding the tie-break was rejected and the claimant's claim for direct discrimination succeeded.

2.10.5 Positive Action in Practice

To consider the extent to which the positive action provisions of the Equality Act 2010 are utilised, Davies and Robison (2016) argue that "Despite laws in Britain permitting limited positive action initiatives to combat dis-advantage faced by minority groups in employment since the mid-1970s, the subject has notoriously been a neglected and highly controversial area in the United Kingdom." (p. 83). Further, there is an accompanying "lack of empirical research into the use of positive action" (p. 91), as well as very little socio-legal research in this area. Davies and Robison's (2016) small-scoping study explored "the awareness, use and perceptions of voluntary, public and private employers" (p. 93) towards the positive action provisions of the Equality Act 2010. This study found that 25% of survey respondents were not aware of the positive action provisions and of those that had an awareness of the provisions, "only a relatively small proportion of these (30 percent) stated that their organization had previously used such provision" (Davies and Robison, 2016, p. 95). The study further found a "reticence" to using Section 159 in light of potential legal consequences and "the difficulty around determining what may amount to an 'equally qualified comparator'" (Davies and Robison, 2016, pp. 96-97).

In addition to this, two recent reports have sought to address this lack of empirical research. In 2018, the YWT published a report based on research into "the attitudes towards and use of positive action in relation to apprenticeships aimed at addressing gender inequality in the construction, engineering and ICT sectors in England" (YWT, 2018, p. i, para. 1). Whilst most participants in this research had an awareness of the term 'positive action', "many participants reported a lack of clarity and confusion around the detail of a definition" (YWT, 2018, p. i, para. 5), particularly demonstrating a "conceptual confusion" (YWT, 2018, p. 33) between positive action and positive discrimination. The report found that participants that had a greater

understanding of positive action were often Equality, Diversity and Inclusion (EDI) practitioners and Human Resources (HR) specialists, however “even specialists expressed a lack of clarity” (YWT, 2018, p. i, para. 5), on the detail. Despite this lack of clarity and conceptual confusion, the majority of the participants were in favour of the use of positive action. Similar to the findings of Davies and Robison (2016), outlined above, the YWT research identified “a lack of mainstream use of positive action initiatives” largely as a result of considerations regarding the denigration of merit, concerns around legal liability “and a belief that inclusive rather than preference-based practice was a more appropriate and effective means” of addressing underrepresentation (YWT, 2018, p. i, para. 7). In relation to the Section 159 tie-break, the report found that many participants had an awareness of this provision; however, there was a general lack of understanding of both the detail and how the tie-break would work in practice. Participants within the research also considered ways in which to address underrepresentation, with many considering that positive action initiatives should not be implemented on their own “but instead that a strategic and holistic life cycle approach should be applied” (YWT, 2018, p. ii, para. 9). Further, participants also felt that there is a need for further guidance for employers on positive action, as well as “knowledge transfer and promotion campaigns” on the use of positive action (YWT, 2018, pp. iv-v, para. 13).

Linking with the YWT research, in 2019, the EHRC produced a report setting out the findings of a roundtable discussion with academic, government and policy experts in the area (EHRC, 2019). Similar to the YWT findings, participants in the roundtable discussion identified “an issue with the lack of a consistent definition of positive action” with debate around whether measures that may be termed “inclusive practice” could fall within the definition of positive action, or whether a definition of positive action requires the provision of some advantage (EHRC, 2019, p. 49). Some participants also discussed the lack of awareness around the requirement of “proportionality” and what “proportionate” means in practice (EHRC, 2019, p. 50). Participants pointed to the confusion around terminology and the lack of consistent guidance as a reason for the low awareness of, confidence in and engagement with positive

action, often based on “a fear of legal liability, which can arise from a conceptual confusion between positive action and positive discrimination” (p. 51). Furthermore, the EHRC report outlined that whilst most participants felt that positive action has the potential to be an effective tool to addressing under-representation, “almost all participants felt that in its existing form (under the EA 2010) positive action lacks efficacy, and the obstacles impacting on use have resulted in a tool that lacks impact, or worse, creates resentment and detracts from its core purpose” (EHRC, 2019, p. 50). Further, and similar to the YWT (2018) findings, participants within the EHRC roundtable also identified a need for “a holistic life cycle approach to positive action” (p. 51) in order to create an environment in which positive action measures are able to succeed. Participants within this research felt that lower-level positive action measures centring around outreach and encouraging people from under-represented groups to apply for positions are a “more user-friendly and safer approach to positive action” (p. 54). This is particularly the case when compared to the Section 159 tie-break of which participants discussed a widespread lack of use. In order to overcome this lack of use, some participants within the EHRC roundtable discussed whether positive action should be made mandatory, accompanied by “sufficient guidance, support and incentives in place to support” its mandatory use (EHRC, 2019, p. 54). However, other participants felt that it would not be useful to make positive action mandatory in light of the current confusion and inconsistent use. Similar to the YWT (2018) findings, the EHRC (2019) report identified a need for “more effective and strategic promotion of positive action”, as well as “more robust guidance” on its use (p. 55).

2.11 Reflexive Regulation

McCrudden (2007) argues that the “significantly greater legal space for employers to engage in positive action” (p. 258) within the Equality Act 2010 is an example of the legislative approach of reflexive regulation. As such, the final section of this literature review considers the characteristics and requirements for success of this approach. Fredman (2012) argues that “despite increasingly sophisticated antidiscrimination laws, discrimination and

inequality have proved remarkably resilient” (p. 265), and therefore questions should be asked around the law’s ability to achieve social change. She argues that inequality is embedded, and so whilst the approach of protection against discrimination for individuals may achieve a positive outcome for that individual, this approach is limited in its ability to address the “structural inequalities” that exist within society (p. 266). This view is supported by Hepple (2011) who argues that under the complaints-based approach, individual cases can have a positive effect, but this is “generally short lived, and can lead to defensive and negative attitudes to change” (p. 317), and we should not expect change through the command-and-control approach. Both of these are in line with McCrudden’s (2007) statement that under reflexive regulation, “the cause of regulatory failure in the past is attributed to a failure to appreciate the limited role that law can play in bringing about change directly in other social sub-systems” (p. 259).

In the literature, Teubner’s (1987) “regulatory trilemma” is frequently referenced. This states that legal interventions fail because “the targeted sub-system ignores the intervention, or the intervention damages the sub-system’s ability to reproduce itself... or the legal system loses its legitimacy because it is ineffective” (Hepple, 2011, p. 320). Fredman (2012) argues that the way forward is to “fashion new legal tools” (p. 265), and Teubner’s solution “is to create a new model of ‘reflexive’ law which does not seek to impose substantive rules on sub-systems but instead works with the internal dynamics of those systems” (Hepple, 2011, p. 320). The core concept of reflexive regulation is “regulation of self-regulation” (Rogowski, 2015, p. 72) or “enforced self-regulation” (McCrudden, 2007, p. 265). The key idea is that, “in order to influence other autopoietic systems, the legal system must have to resort to indirect means of regulation” (Rogowski, 2015, p. 74) and so direct state control is replaced with internal control, recognising “the inner logic of individual social systems” (Cunningham, 2015, p. 144). Fredman (2012) argues that this essentially means that, instead of a solution being imposed on a body, “it is required to come up with its own set of solutions” (2012, p. 419), with the law acting as “a stimulus to self-regulation” through a process of deliberation (McLaughlin, 2014, p. 5).

Hepple (2011) states that reflexive regulation involves three interlocking mechanisms:

internal scrutiny by the organisation itself to ensure self-regulation... The involvement of interest groups (such as managers and employers) who must be informed, consulted and engaged in the process of change” and “an enforcement agency... which should provide the back-up role of assistance, building capabilities and ultimately sanctions (p. 321).

Braithwaite (2008) argues that a key feature of reflexive regulation is the “regulatory pyramid”, where there is a gradual escalation of sanctions until compliance is reached. At the base of the pyramid is information and persuasion, then moving up to internal scrutiny, support for individuals and the provision of conciliation, inquiry and investigation, unlawful act notices, agreements in lieu of enforcement and finally sanctions. This is a good way to visualise reflexive regulation as it shows how it involves self-regulation, seen near the base of the pyramid as information and persuasion and internal scrutiny, but that this self-regulation is enforced, and so may result in unlawful act notices and sanctions.

Much of the literature agrees that reflexive regulation has the potential to be very successful, avoiding many of the problems associated with other forms of regulation and the issues outlined in Teubner’s “regulatory trilemma”. McLaughlin (2014) argues that reflexive regulation “can avoid the rigidity and complexity of the ‘command and control’ approach while at the same time circumventing the inaction of purely self-regulatory approaches” (p. 3). Fredman (2012) appears to agree with this, stating that the reflexive approach can “harness the energy and problem-solving expertise of those who are in the best position to bring about change, rather than imposing prescribed solutions which are likely to encounter resistance or token compliance” (p. 272.). This means that the solutions proposed are more likely to be followed: as each organisation is encouraged to engage in its own assessment of problems, it

“encourages the organisation to ‘own’ the solutions that it devises; it encourages mutual learning” and the involvement of different stakeholders, and so the solutions will be those which are best suited to the particular organisation, and therefore it is more likely to be successful in achieving the end goals than other forms of regulation (McCrudden, 2007, p. 260).

The involvement of different stakeholders outlined above is related to one of the key successes identified by Fredman (2012) who states that this “deliberative democracy” can help to address structural inequality (p. 272). She argues that “Groups subject to discrimination inevitably have unequal bargaining power and are unlikely to achieve gains in a pure interest-based decision-making” approach and so the reflexive approach, which “does not aim to resolve the issue according to the balance of political or other power” but rather through deliberation on key issues and “reference to reasons which all are able to accept as reasonable” will result in much fairer outcomes (Fredman, 2012, p. 272). The potential success of reflexive regulation in addressing structural inequality shows how this approach can be particularly successful for positive action, which as stated, aims to “redress systematic, historical or institutional discrimination” (Jarrett, 2011, p. 3).

Despite the potential success associated with reflexive regulation, “no system of regulation is perfect” (McCrudden, 2007, p. 262), and three key limitations of the approach have been identified. Firstly, although Fredman (2012) argues that it does not aim to resolve the issue according to the balance of power, McLaughlin (2014) states “there is a danger that deliberation may underplay or even ignore conflicting economic and political interests... Existing power relations may be left unchallenged and abuses of power allowed to continue” (p. 3). This aligns with McCrudden (2007) who states that, because under the approach conflicting political interests may not be recognised, failure will instead be attributed to “problems of communication”, which “may allow those refusing to change to escape too easily under the guise of a failure to understand” when actually the issues may instead be “a well-understood resistance” (p. 262).

In addition to this, McLaughlin (2014) highlights how the deliberative approach will “exist not only between employer and workers, but also among workers” (p. 3) because historically collective bargaining can be said to have perpetuated inequalities rather than challenged them, and so unions may face a conflict in issues such as equal pay, as those who have previously benefited under collective bargaining may now be challenged. Because of this, McCrudden (2007) argues that “Encouraging deliberation on *how* to implement may, however, encourage deliberation on *how far* to implement, and ultimately on *whether* to implement” which is not what the Government intended (p. 262). Furthermore, McLaughlin (2014) highlights how, for the reflexive approach to be effective, “functional ‘bridging institutions’ between the legal system and the organizational sphere need to exist” (p. 3). He argues that whilst this may be less of a problem in the “local authority sector where unions are strong and well established”, it may prevent the reflexive approach working effectively in the private sector (McLaughlin, 2014, p. 3).

The third problem is that, in order for reflexive regulation to succeed, as Cunningham (2015) argues, the key challenge “is to identify the structural conditions for the creation of an organizational conscience in order to provoke the system to move from its current state” (p. 144) and McCrudden (2007) identified three pre-conditions for reflexive regulation to be successful: firstly, there must be a requirement that both private and public sector bodies examine what they are doing, using comparable evidence; secondly, there should be a requirement that bodies consider alternative approaches “that will shift entrenched patterns of inequality”, that should be monitored by an external authoritative body; finally, there must be a mechanism that requires the private firms and public sector bodies to engage with other stakeholders “that will regularly challenge the set of assumptions that these bodies currently adopt” (p. 265).

It is argued that there is a clear attempt to take a reflexive regulation approach within the Equality Act 2010, with none of the previous regulatory models (collective *laissez faire*, enforced collective regulation, individual rights, command-and-control) appearing to be used, with key examples of this

approach seen with the restriction of the duties under the public sector equality duty, and the “significantly greater legal space for employers to engage in positive action” (McCrudden, 2007, p. 258), which is particularly important for this review. Despite this, because of the limitations of the approach outlined above, the Act has been criticised for not reaching its potential. McCrudden (2007) argues that the Act has not successfully addressed the problem of identifying the pre-conditions necessary for the reflexive regulation to be successful, and therefore it is “in danger of slipping into the trap of non-regulation, or re-regulation”. Hepple (2011), however, argued that the 2010 and 2006 Acts were a step forwards towards reflexive regulation, but that the Government has subsequently taken “two significant steps which will undermine reflexivity and enforced self-regulation” (p. 315), in restricting the EHRC to ‘core’ functions and by failing to retain the requirement of engagement amongst the specific duties of public bodies.

Despite the criticisms and questions regarding the 2010 Act’s use of reflexive regulation, the proposals by the EFL to introduce a mandatory interview rule can be seen as an example of the approach working successfully. As McCrudden (2007) identified, the extension of the legal space for employers to engage with positive action is a clear example of the reflexive approach, as its aim was to provide employers with the scope to develop positive action provisions that suit their organisations. Because of this, the fact that the EFL has introduced the Recruitment Code when they were not legally required to do so may demonstrate the legislative approach of reflexive regulation working effectively, and this will be considered in further detail in Chapter Seven.

2.12 Critical Race Theory

This thesis does not adopt a sole Critical Race Theory (CRT) methodology (see Section 3.6 of Chapter Three for further information); however, as it does consider the relationship between race and the law and draws on some ideas that have their basis in CRT, it is important to outline the key features of the concept.

CRT has been described as “the most exciting development in contemporary legal studies” (West, 1995, p. xi). It was first developed in the 1970s as a result of the stalling progress following the civil rights movement in the 1960s. Spearheaded by Derrick Bell, Kimberlé Crenshaw, Angela Harris, Charles Lawrence, Mari Matsudi, Patricia Williams and Richard Delgado, CRT built on both Critical Legal Studies and Radical Feminism (Delgado and Stefancic, 2001). Delgado and Stefancic (2001) argue that from Critical Legal Studies, CRT borrowed “legal indeterminacy - the idea that not every legal case has one correct outcome”, but instead can be decided either way depending on which line of authority is emphasised, as well as the idea that “favourable precedent, like *Brown v. Board of Education*, tends to deteriorate over time” (p. 5). From Radical Feminism, CRT built on the insight into relationships between power and social roles, “as well as the unseen, largely invisible collection of patterns and habits that make up patriarchy and other types of domination” (Delgado and Stefancic, 2001, p. 5). CRT also took key concepts from “conventional civil rights thought” including “redressing historic wrongs... the insistence that legal and social theory have practical consequences... [and] a sympathetic understanding of notions of nationalism and group empowerment” (Delgado and Stefancic, 2001, p. 5).

Hylton (2012) outlines that the fundamental premise behind CRT “is that society is fundamentally racially stratified and unequal, where power processes systematically disenfranchise racially oppressed people” (p. 24) and Treviño, Harris and Wallace (2008) argue that “At its core, CRT is committed to advocating for justice for people who find themselves occupying positions on the margins”, i.e., those from ‘minority’ groups (p. 8). Crenshaw, Gotanda, Peller and Thomas (1995) argue that there is not one set of doctrines to which all CRT scholars subscribe, but that there are two common interests: firstly, to understand how white supremacy has been created and maintained through ideals such as the rule of law, and secondly to understand how to change the bond “between law and racial power” (p. xiii). Delgado and Stefancic (2001) argue that there are three key tenets to CRT. Firstly, “that racism is ordinary, not aberrational” (Delgado and Stefancic, p. 7). Their second tenant is “interest convergence”, which argues that the “white-over-color

ascendancy serves important purposes” and because both elite white people (materially) and working-class white people (physically) benefit from racism, a significant proportion of society has little motivation to eradicate it (Delgado and Stefancic, 2001, p. 7). Their final tenet is “social construction”, which contends that race is a product of “social thought and relations” and not biological or genetic fact (Delgado and Stefancic, 2001, p. 7).

Considering the three tenets outlined above, it is clear to see how CRT emerged as a response to ‘colour-blindness’ (Crenshaw, 2019). Because CRT contends that racism is ordinary and present in everyday life, it thus follows that racism will also be present throughout social structures, which will therefore “keep minorities in subordinate positions” (Delgado and Stefancic, 2001, p. 22). Accordingly, CRT scholars are critical of a more liberalistic approach and contend that colour-blind approaches will only address the most shocking racial harms, with “aggressive, color-conscious efforts” required to make any real progress (Delgado and Stefancic, 2001, p. 22). As such, given that to date much of the focus has been on colour-blind law, CRT argues that values such as the rule of law and rights-based approaches actually reflect the interests of the dominant (in this instance white) group and thus maintain the status quo (Delgado and Stefancic, 2001). This is supported by Crenshaw’s recent definition of CRT as “a way of looking at law’s role platforming, facilitating, producing, and even insulating racial inequality in our country” (Columbia News, 2021, para. 13). It further aligns with Hylton’s (2010) view that “CRT confronts ‘race-neutrality’ in policy and practice”, acknowledging the importance of the Black voice, which is “often marginalized in mainstream theory, policy and practice” (p. 338). CRT’s focus on these more “color-conscious efforts” (Delgado and Stefancic, 2001, p. 22) demonstrates how it provides a basis for understanding positive action: Crenshaw, Gotanda, Peller and Thomas (1995) argue that CRT “understands that... distributions of power and resources which were racially determined before the advent of [positive] action would continue to be so if [positive] action is abandoned” (p. xxix). They argue that the “neutral baseline” that positive action is said to depart from “is in fact a mechanism for perpetuating the distribution of rights, privilege and opportunity established under a regime of uncontested white supremacy”

(Crenshaw, Gotanda, Peller and Thomas, 1995, p. xxix). Accordingly, CRT supports positive action “as a limited approach which has achieved a meaningful, if modest measure of racial justice” (Crenshaw, Gotanda, Peller and Thomas, 1995, p. xxx).

CRT’s focus on racism as an ordinary aspect of everyday life has resulted in the concept coming under considerable criticism, particularly in the USA since the resurgence of the Black Lives Matter movement in summer 2020. In June 2021, former Vice President Mike Pence described CRT as “nothing short of state-sponsored and state-sanctioned racism”, calling for its use in schools to be banned (Cole, 2021, para. 6). As of July 2021, nine Republican-controlled states have introduced laws or other rules which prohibit the teaching of CRT (Zurcher, 2021). Despite this, there are many academics that argue that CRT has key advantages over more traditional approaches to critical policy studies. Hylton (2012), for example, argues that CRT provides “a more critical ‘race’ focused perspective” that speaks to lived experience and gives the ability to “make bold statements about, and challenge, the racialised order of things” (p. 25). Further, West (1995) argues that CRT “is a gasp of emancipatory hope that law can serve liberation rather domination” (p. xii).

CRT has historically been utilised in areas such as law, policy and education. However, Hylton (2010) argues that CRT can also contribute to a study of anti-racism in sport. He argues that sport is often viewed to be “a colour-blind meritocracy where a ‘level playing field’ operates”, but CRT is “suspicious of parts of society that claim to be accessible and fair across racial and ethnic divides” (Hylton, 2010, p. 336). Because of this, he argues that CRT provides an opportunity to dismantle the colour-blind and race-neutral policies that sport has largely focused on to date (Hylton, 2005). In particular, he argues that “Utilizing CRT in anti-racist sport practice and policy offers potential for resistance to the reproduction of established practices, knowledge and resources” which continue to perpetuate racial inequality in sport (Hylton, 2010, p. 351). This would shift the focus from colour-blind and race-neutral policies to those which are colour-conscious, or “‘race’ centred” (Hylton, 2005), p. 94). This has key implications for positive action initiatives in football, such

as the EFL's Recruitment Code, which can be described as 'colour-conscious' Hylton (2005).

Finally, Hylton (2010) argues that examples of a CRT approach to challenging inequality in sport are beginning to emerge. One such example is Gardiner and Welch's (2011) consideration of key equality issues in football in light of CRT. Through this consideration, they argue that the CRT perspective that "the law cannot, in itself, resolve the problem of racism in society or the consequences of it" is also seen within sport (p. 234). They further contend that "CRT reminds us that the law is at its most effective when it operates as a part of a wider perspective and pluralistic social regulatory framework" (Gardiner and Welch, 2011, p. 235). They state that, within a sporting context, this should take the form of flexible sporting rules that can have a greater impact than the law alone (Gardiner and Welch, 2011). This shows how a holistic approach to addressing racial inequality in sport, and football, is necessary, as the law alone cannot achieve change. This aligns with the reflexive approach, outlined in Section 2.11 above, and demonstrates the significance of the EFL's introduction of the Recruitment Code, which will be explored in detail throughout this thesis.

2.13 Conclusion

To conclude, from the literature it can be seen that, although there is a certain "specificity" relating to sport and its adherence (or lack of) to the key principles of equality law (Beloff, 2012), the "supervised autonomy" that sport is afforded means that it should act responsibly (Foster, 2000). Further, sport does have the ability to play a major role in promoting equality between groups in society (Sport England, 2000), this can be seen through the proportion of professional players from a BAME background within English professional football. Despite advancements in this area, however, there is still significant underrepresentation of BAME coaches and managers (SPTT, 2015, p. 2). The key barriers facing these coaches identified within the SPTT reports (2014-2017) appear similar to the barriers facing African American coaches in the NFL prior to the introduction of the Rooney Rule, which is what the EFL's proposals appear to be based on, particularly regarding the reliance on racial

stereotypes and “Old Boy” networks (Collins, 2007). These rules work by requiring decision makers to confront their unconscious bias, as a meaningful interview discussing a common interest is said to help to overcome preconceptions the interviewer may have (Duru, 2008). Although there are some that argue the Rooney Rule has worn out its utility (Corapi, 2012), there does appear to be some consensus that it has been successful, with the likelihood of an African American head coach being appointed increasing since its introduction (DuBois, 2015). The success of the Rooney Rule in this regard may thus explain why the EFL felt that an interview rule was the most appropriate means of addressing the underrepresentation of BAME managers and coaches within their leagues.

At a conceptual level, the EFL’s Recruitment Code can be considered a form of positive action, particularly when considered in light of a broad definition of positive action as “an activity designed to improve the position, in terms of the distribution of benefits or dis-benefits, of a given social group or sub-group... on the basis that its members suffer systematic disadvantage in that regard” (Barnes, 2009, p. 623). Positive action, which is governed by Sections 158 and 159 of the Equality Act 2010, is said to be a “notoriously... neglected and highly controversial area in the United Kingdom” (Davies and Robison, 2016, p. 83). This controversy may be as a result of its closer alignment to a substantive model of equality, which moves beyond a “focus on the abstract individual” to also considering the “attendant disadvantage” caused by protected group membership (Fredman, 2005, pp. 165-166). Research into positive action has found limited use of positive action measures (Davies and Robison, 2016; YWT, 2018; EHRC, 2019). This is particularly the case in relation to measures which move beyond lower-level initiatives focused on outreach, with a particular lack of engagement with the Section 159 tie-break (YWT, 2018; EHRC, 2019). The YWT (2018) and EHRC (2019) research identified a “conceptual confusion” (YWT, 2018, p. 33) between positive action and positive discrimination, with even those who work within EDI and HR expressing a “lack of clarity” (YWT, 2018, p. i, para. 5), and this, along with an accompanying fear of legal liability, may explain why the positive action provisions of the Equality Act 2010 are largely underutilised within Britain.

Accordingly, participants in the YWT (2018) research called for measures which increase awareness and understanding of positive action, with EHRC (2019) research participants also identifying a need for further guidance on the measures. Participants in both sets of research also discussed how positive action measures should be introduced as part of a “holistic life cycle” (EHRC, 2019, p. 51) approach to addressing underrepresentation and disadvantage. In light of this widespread lack of use of positive action, it is particularly notable that the EFL, which is afforded a level of autonomy, have taken the step to introduce a positive action measure. Because of this, it is important to consider the extent to which the legislative approach of reflexive regulation, which is particularly evident within the permissive positive action sections of the Equality Act 2010 (McCrudden, 2007) may have played a role in encouraging the EFL to act.

The themes emerging from this background context and review of the literature were used to identify areas in which this research can contribute to the existing body of literature or help fill current gaps. In light of the themes emerging from the literature, this research seeks firstly to explore the barriers that BAME managers and coaches face with regards to their career progression in professional football, considering whether the themes identified within the literature are similar to the perceptions held by participants in this research. Because of the limited existing socio-legal research into positive action, the research aims to help to fill this gap by considering stakeholder perceptions on the use of positive action as a tool to address general underrepresentation. Whilst there is some emerging research into the EFL’s Recruitment Code, this is presently largely limited to the SPTT reports (2014-2017), the report by McGurk et al. (2019) and research by Conricode and Bradbury (2020). As such, this research seeks to contribute to the developing body of research in this area by evaluating whether the Recruitment Code can be considered an effective or flawed form of positive action. Further, at present, there is very little research into the Recruitment Code from an anti-discrimination law perspective and, accordingly, this research thus considers the extent to which the Recruitment Code fits within the legislative framework under the Equality Act 2010 and the extent to which it can be considered an example of effective

reflexive regulation. It then draws upon stakeholder perceptions and the legal analysis to identify ways in which the EFL's Recruitment Code, and positive action more generally, can become more effective ways of addressing underrepresentation within football and beyond.

Chapter Three

Methods and Methodology

3.1 Description

In light of the continued underrepresentation outlined in Chapter Two, this research explores the use of positive action to increase the representation of BAME football managers and coaches, focusing on the EFL's Recruitment Code as an example of such a measure within football. The research considers whether the EFL's Recruitment Code is an effective or flawed form of positive action to address the racial disadvantage within professional football coaching. It firstly explores participants' perceptions of the barriers that BAME managers and coaches face in relation to their career progression, as well as perceptions of positive action as a tool to address underrepresentation more generally. The research further explores the views of participants on the EFL's Recruitment Code during its pilot stage, considering whether participants perceive the Recruitment Code to be both necessary and the most effective means of achieving increased representation. In this research, participants are largely stakeholders, i.e. those who may be affected by both the general issues discussed and the introduction of the Recruitment Code at varying levels. Such participants include Ex-Professional Players, Managers, Coaches, Equality, Diversity and Inclusion Practitioners, Academic Researchers and Fans. The research aims to consider the extent to which the Recruitment Code fits within the legal framework, specifically whether it can be considered a legally permissible form of positive action under Section 158 or 159 of the Equality Act 2010. It also considers whether perceived problems with the Recruitment Code are exacerbated by its lack of adherence to the legal framework and key requirements for effective reflexive regulation. Finally, the research provides suggested pointers for action on ways to increase the success of both the Recruitment Code and positive action more generally.

3.2 Rationale

An established body of research into the experiences of BAME managers and coaches has emerged, which explores reasons behind the underrepresentation of such managers and coaches and the barriers they face (see SPTT, 2015; Cashmore & Cleland, 2011; Bradbury et al., 2018). However, research into specific measures aimed at tackling underrepresentation, particularly recent policies introduced by football authorities, is still developing. This is particularly the case for the EFL's Recruitment Code, which is the key focus of this research, due to its relatively recent introduction. Furthermore, it is argued that the issue is "still largely unexplored" from an employment and anti-discrimination law perspective (Veuthey, 2013, p. 76). There is also a "lack of empirical research into the use of positive action" (Davies & Robison, 2016, p. 91). This research aims to contribute towards filling this gap, by considering perceptions of participants from varying stakeholder groups on both positive action and the EFL's Recruitment Code as a form of positive action, as well as providing a consideration of the Recruitment Code through an anti-discrimination and equality law perspective.

3.3 Research Objectives

In order to determine whether the EFL's Recruitment Code is an effective or flawed form of positive action to address racial disadvantage within English professional football coaching, the objectives of this research are to:

1. Explore stakeholder perceptions of the experiences of Black, Asian and Minority Ethnic managers and coaches within English football
2. Consider stakeholder perceptions of the concept of positive action and its use in addressing underrepresentation

3. Evaluate whether the EFL's Recruitment Code is an effective and legal form of positive action and reflexive regulation in light of the British legal context
4. Identify ways in which the EFL's Recruitment Code and positive action can become more effective ways of addressing underrepresentation, within football and beyond

3.4 Research Questions

In meeting these core objectives, the research questions are:

1. What are stakeholder perceptions of barriers to the career progression of Black, Asian and Minority Ethnic football managers and coaches within English football?
2. What are stakeholder perceptions of the use of positive action under the Equality Act 2010 to address underrepresentation generally, both within and beyond the football context?
3. What are stakeholder perceptions of the EFL's Recruitment Code as a form of positive action?
4. To what extent does the Recruitment Code fit within the legislative framework under the Equality Act 2010?
5. To what extent can the Recruitment Code be considered an example of effective reflexive regulation within the British legal context?
6. What are stakeholder-perceived barriers to the successful implementation of the EFL's Recruitment Code and how can these be overcome?

7. What lessons can be learnt from the introduction of the EFL's Recruitment Code as a form of positive action for English football, sport in England generally, and beyond?

3.5 Research Philosophy

Gilgun (2011) argues that inductive research focuses “on the complex social and personal forces that shape individual lives” (p. 344). This research, which focuses on barriers to BAME manager and coach career progression and ways to overcome these barriers, is considered to be inductive. Bryman (2012) states that using an inductive approach means that theoretical ideas are derived from the data rather than decided in advance, illustrating its link to qualitative research and grounded theory. As such, the inductive nature of this research informed the decision to utilise grounded theory within the data analysis process. The inductive approach was appropriate for this research, as the researcher's positionality meant that it was essential that themes and theoretical ideas emerged from the data, rather than pre-determined themes being imposed upon the data (see Section 3.7 and Section 3.8.3 for further discussion on Positionality and Data Analysis).

In addition to the inductive approach, this research adopts an interpretivist epistemology. Bruschia (2005) argues that interpretivist research is relevant to questions on “the lived world of human beings and how that world is subjectively constituted, construed, and made meaningful by individuals and groups” (p. 83). Bryman (2012) highlights that interpretivism recognises the subjectivity of people, as opposed to positivism which focuses on “the application of the methods of the natural sciences to the study of social reality and beyond” (p. 28). Accordingly, the interpretivist epistemology informed the decision within this research to acknowledge and consider individual participants' relative views in light of their individual backgrounds and experiences. This decision is further supported by Schwandt (1994), who argues that a key goal of interpretivism is “understanding the complex world of lived experience from the point of view of those who live it” (p. 118), which is applicable to this research that aims to explore lived experiences.

One ontology falling under the interpretivist paradigm is constructivism, which Hiller (2016) argues is closely linked to interpretivism because the key aim of constructivism is to understand phenomena through interpretive processes. As such, constructivism is the ontological position adopted in this research. Bryman (2012) states that constructivism “is an ontological position... that asserts that social phenomena and their meanings are continually being accomplished by social actors” (p. 33). Hiller (2016) argues that “Constructivist research seeks to understand the phenomena through the perceptions of those under investigation”, believing that interpretations of phenomena are relative and dependent on context, such as “time, place and cultural situation” (p. 112). The interpretivist ontology informed the approach taken in this research, in relation to both data collection, data analysis and the discussion of themes throughout this thesis. In light of the constructivist ontology, this research acknowledges throughout that participants’ views and perceptions on matters such as the underrepresentation of BAME managers and coaches, positive action and the EFL’s Recruitment Code are relative and have been shaped by their own experiences. Further, the constructivist ontology also informed the decision to make explicit reference throughout this thesis to ways in which participants’ views may have been shaped by their race or ethnicity, their personal experiences and/or their career history, in order to consider the EFL’s Recruitment Code “through the perceptions” of the research participants (Hiller, 2016, p. 112).

3.6 Methodology

This research adopts a qualitative research methodology, which Öhman (2005) argues “focuses on individuals’ lived experiences as they are presented in thoughts, ideas, feelings, attitudes and perceptions” (p. 273). In particular, this research adopts a bricolage approach to qualitative methodology, which is “a critical, multi-perspectival, multi-theoretical and multi-methodological approach to inquiry” (Rogers, 2012, p. 1). Denzin and Lincoln (1999) identified five forms of bricolage research, and as this research largely concerns opinion, it adopts an interpretive bricolage approach, which acknowledges that each

participant's interview outlines a different perspective. Denzin and Lincoln (1999) argue that decisions regarding methodology and interpretive practice do not need to be made in advance and that this "combination of multiple methodological practices... adds rigor, breadth, complexity, richness" (p. 6). This is further supported by Berry (2004), who argues that using one methodology or theory only provides "a partial answer" to research questions (p. 9). As such, it is argued that the bricolage approach is most appropriate for this research and enables the research objectives to be met most effectively.

In addition to increased rigour and depth, the interpretative bricolage approach is also effective at dealing with issues of positionality. As a white, female, researcher researching into issues faced by BAME men in a male-dominated sport, there may be issues regarding positionality, as this means that the researcher may have objectivity but not lived experience which could impact the research (see further discussion of positionality in Section 3.7 below). The interpretive bricolage approach helps to overcome this, as Denzin and Lincoln (1999) state that an interpretive bricoleur is a researcher who "understands that research is an interactive process, shaped by his or her own personal history, biography, gender, social class, race and ethnicity" (p. 6). Because of this, interpretive bricoleurs are required to look at their research reflexively, "not only examining an object of inquiry, but also... How their positioning affects their research processes" (Rogers, 2012, p. 4). It is generally agreed that reflexivity can help to overcome issues relating to positionality, and so the interpretive bricolage approach, which focuses on reflexivity, was the most appropriate to take for this research. In addition to helping overcome issues in relation to positionality, Rogers (2012) argues that reflexivity also "adds depth and plurality to the inquiry process" (p. 4). As this research adopts an interpretive bricolage approach, which focuses on reflexivity and flexibility, it is felt that it was not necessary to adopt a solely Critical Race Theory (CRT) methodology, which would have more narrowly defined the research. Instead, the research was informed by CRT and utilised some terminology and ideas that have their basis in CRT, but it was not bound by this approach.

The interpretive bricolage approach enabled a number of qualitative methodologies to be employed throughout this research, which was particularly beneficial given the range of backgrounds of the research participants. Clandinin and Connelly (2000) argue that narrative inquiry is a methodology for researching into experience and as such, the narrative inquiry approach was adopted for participants that were discussing their own lived experiences; for example, for BAME participants who were Ex-Professional Players and Managers or Coaches, or current grassroots coaches, narrative inquiry enabled such participants to detail their experiences in this regard. Narrative inquiry was also used for EDI Practitioners who discussed their experiences of working on equality issues in football and/or their experiences with positive action. However, narrative inquiry was not an appropriate methodology for every interview; some participants, for example the focus group participants, were 'outsiders' to football and did not work as EDI Practitioners and, as such, were not discussing their lived experiences.

Furthermore, it is important to note that this research is also socio-legal in nature. Graham, Davies and Godden (2017) argue that "Socio-legal research... puts law and society into a single frame for scholarly analysis" (p. 484). This approach is particularly evident within this research when participants were asked to consider the legal concept of positive action and its success – or otherwise – in addressing underrepresentation both throughout society generally and within football. This clearly puts "law and society into a single frame" (Graham et al., 2019, p. 484), as it required a consideration of the extent to which the law successfully addresses the social and historical context behind the underrepresentation of protected groups, in this instance BAME people and the history of racial inequality in both English football and society more broadly. Further, the consideration of law and society is particularly evident through the exploration of the EFL's Recruitment Code as an example of reflexive regulation working effectively, as this explores the role that the law can play in encouraging action, including regulation, in specific subgroups within society.

3.7 Positionality

Dwyer and Buckle (2009) argue that the “issue of researcher membership in the group or area being studied is relevant to all approaches of qualitative methodology as the researcher plays such a direct and intimate role in both data collection and analysis” (p. 55). As such, it is important to discuss the researcher’s positionality. As detailed earlier, this research was carried out by a white, female researcher, who was researching into the experiences of BAME male football managers and coaches. Because of the researcher’s race and gender identity, the themes explored within this research were not part of her lived experience and, as such, the researcher will always be considered an ‘outsider’ in this regard. Savvides, Al-Youseff, Colin and Garrido (2014) argue that “outsiders may be accused of lacking understanding and of detachment” and that “contextual references... may escape the researchers’ observation” (p. 414). They also argue, however, that being an outsider confers some benefits, namely “objectivity... and the ability to stand back and draw independent conclusions” (Savvides et al., 2014, p. 414). Furthermore, Bourke (2014) argues that although the identity of the researcher can impact the research process, positionality is not a limitation if reflexivity is employed and that it is most important that researchers “do not attempt to speak for research participants who are people of colour, that [they] do not attempt to work on their behalf to help rise them up”, rather their work “has to reflect the voices of those who participate in research” (p. 3). As detailed above, adopting both an inductive and interpretive bricolage approach has enabled the researcher to consider her research reflexively. Further, using grounded theory for data analysis ensured that the researcher identified themes that emerged from the research, rather than seeking data which supports pre-identified themes (Cousin, 2009). This therefore enabled the researcher to “reflect the voices” of the research participants, rather than speak on their behalf (Bourke, 2014, p.3).

Whilst the researcher will always be considered an ‘outsider’ in relation to the lack of lived experiences that impact BAME male football managers and coaches, Merriam, Johnson-Bailey, Lee, Kee, Ntseane and Muhamad (2001)

argue that “Positionality is... determined by where one stands in relation to ‘the other’” (p. 411) and, as such, researchers can “experience moments of being both insider and outsider” (p. 415) relative to the “loci along which we are aligned with or set apart from those whom we study” (p. 411). This means that, whilst the researcher will always be an outsider in relation to race and gender identity, the researcher may be an ‘insider’ when considering other factors, such as group membership through employment. Crucially, Merriam et al. (2001) argue that the insider or outsider position can shift, and it is important to acknowledge here the way in which the researcher’s positionality through in-group membership has changed during the course of this research.

Adler and Adler (1987, cited by Dwyer & Buckle, 2009) identified three “membership roles” of qualitative researchers:

(a) peripheral member researchers, who do not participate in the core activities of group members; (b) active member researchers, who become involved with the central activities of the group without fully committing themselves to the members’ values and goals; and (c) complete member researchers, who are already members of the group or who become fully affiliated during the research. (Dwyer and Buckle, 2009, p. 55)

Whilst Adler and Adler’s (1987) three membership roles relate more specifically to observational methods, the types of group membership detailed above reflect the differing roles that the researcher has held during the course of this research.

At the beginning of this research, the researcher was a full-time PhD candidate with an interest in football as a fan, but no further connections with the sport beyond this. Accordingly, at this stage in the research, the researcher could be considered a “peripheral member researcher”, who did not “participate in the core activities of the group” (Adler & Adler, 1987, p. 55). Whilst this may have given the researcher greater objectivity (as discussed above), this also presented key challenges around access: at this stage, the researcher had no

connections to coaches, managers, players or anyone that worked within football. This would have made the recruitment of participants for this research difficult.

Shortly into this research process, the researcher became a member of a voluntary advisory group for Kick It Out, the leading charity on equality, diversity and inclusion within football. Arguably, at this stage the researcher could be considered an “active member” researcher who became “involved with the central activities of the group without fully committing themselves” (Adler & Adler, 1987, cited by Dwyer & Buckle, 2009 p. 55). Whilst the researcher was still an outsider in terms of the race and gender identity of the key focus of this research, this new position enabled the researcher to gain some ‘insider’ insight into diversity and inclusion initiatives within football and to meet various stakeholders at conferences and events, who were recruited as research participants. This relative insider status in relation to the football environment had benefits for this research, as it afforded “access, entry and a common ground from which to begin research” (Dwyer & Buckle, 2009, p. 58). It is important to note here that the researcher remained in this position throughout the data collection and data analysis processes. As such, it is imperative that the researcher maintained a reflexive approach throughout.

Finally, at the beginning of the write-up stage of this thesis, the researcher was recruited to the role of Equality, Diversity and Inclusion Advisor at a Premier League football club. Arguably, the researcher then became a “complete member” researcher “who became fully affiliated during the research” (Adler & Adler, 1987, cited by Dwyer & Buckle, 2009 p. 55). Whilst the data analysis had already taken place, it is important to acknowledge the researcher’s change in positionality, from an outsider in all regards, to an outsider in terms of lived experience of BAME managers and coaches but a relative insider within the football industry. It is also important to note that whilst the researcher became employed within the football industry, she does not work within the EFL, to whom this Recruitment Code applies.

3.8 Methods

In order to meet the research objectives, this research used a multi-method approach, consisting of a focus group, semi-structured interviews and desk-based research. To recruit participants for this research, initially purposive sampling was used, with some use of snowball sampling once the data collection process commenced. Throughout the data collection process, interviews were audio recorded and were then transcribed verbatim. These transcripts were uploaded to and analysed in NVivo, using grounded theory to explore emerging themes. Throughout this research process, ethics were a key consideration, with issues such as anonymity considered throughout.

3.8.1 Data Collection

In order to meet the objectives outlined above, this research used a multi-method approach, consisting of a focus group, semi-structured interviews and desk-based research.

For Objectives One, Two and Three, a focus group and semi-structured interviews were used to explore perceptions of the barriers to career progression that BAME managers and coaches face, as well as the EFL's Recruitment Code as means of overcoming these barriers. These methods are also used to explore perceptions of the use of positive action to address underrepresentation more generally. Initially, a focus group consisting of four undergraduate Sport and Exercise Science students was conducted (see Table 1 below). This focus group was intended to operate as a pilot and used to explore themes that emerged from the early review of the literature to determine which themes should be taken forward for in-depth interviews (Bryman, 2012). It was not originally intended to form part of the formal data collection process. Whilst the focus group did inform the themes to be explored in the later in-depth interviews, it was also decided that data from the pilot focus group would be included within the data analysis, due to its quality in providing an 'outsider' perspective from individuals who are interested in football but do not have any formal connection to the sport or to equality or

discrimination law. It should be noted that the decision to ask for participants to self-define their race and/or ethnicity was made following the focus group and, as such, the race/ethnicity of the focus group participants was not disclosed.

Table 1: Focus Group Participant List

Pseudonym	Role	Gender	Race/Ethnicity
Lizzie	Student	Female	Not Disclosed
Samantha	Student	Female	Not Disclosed
Joe	Student	Male	Not Disclosed
Martin	Student	Male	Not Disclosed

In addition to this focus group, semi-structured interviews were conducted with 17 participants from a range of ethnicities and career backgrounds. These included Ex-Professional Players and Managers, Grassroots Coaches, Academic Researchers and EDI Practitioners (see Table 2). Semi-structured interviews were the most appropriate method of obtaining the majority of the data required for Objectives One, Two and Three, as they “allow researchers to develop in-depth accounts of experiences and perceptions” which “can produce rich empirical data about the lives and perspectives of individuals” (Cousin, 2009, p. 71). The interviews each lasted approximately one hour. The researcher developed an interview guide to inform the discussion (see Appendix A) but allowed “the interviewee... a great deal of leeway in how to reply” (Bryman, 2012, p. 471). The semi-structured nature of the interview ensured that the interviews remained focused, whilst providing the flexibility to discuss the issues that the participant felt were most important. Whilst the majority of interviews were semi-structured and took place in person or via telephone, one participant was unable to conduct an interview in this way. This participant (Harry) instead provided answers to a series of written questions, which can be found at Appendix B. Table 2 below outlines each interview, providing participants with a pseudonym and detailing how they are a stakeholder in relation to the issues discussed (see Section 3.9 on Ethics below for further detail on how these roles were chosen to maintain

anonymity). Following the focus group, it was decided that interview participants would be asked their and/or ethnicity in order to explore the difference between 'insider' and 'outsider' perspectives. As outlined in the Categorisation and Terminology section of the Literature Review (Section 2.2, Chapter Two), it is important that participants were given the opportunity to self-define their race and/or ethnicity wherever possible. As such, at the beginning of each interview, participants were asked to state their race or ethnicity and the table below outlines this exactly as it was provided by the participant. In some interviews, this was not disclosed, and this is also reflected in the below table.

Table 2: Interview Participant List

Interview	Pseudonym	Role	Gender	Race/Ethnicity
Interview 1	Ashleigh	EDI Practitioner (Football)	Female	Black or Mixed Race
Interview 2	Ian	Academic Researcher (Law)	Male	White British
Interview 3	Abdul	Ex-Professional Player and Coach	Male	British Asian
Interview 4	Alice	Academic Researcher (Law)	Female	Not Disclosed
Interview 5	Chloe	Academic Researcher (Law)	Female	Not Disclosed
Interview 6	Philip	Academic Researcher (Sports Equality)	Male	White
Interview 7	Alex	Academic Researcher (Sports Equality)	Male	White British
Interview 8	David	Elite Grassroots Coach	Male	Mixed Black British
Interview 9	Andrew	Elite Grassroots Coach	Male	Mixed Black and White Caribbean
Interview 10	Ade	Ex-Professional Player and Manager	Male	Black British
Interview 11	Craig	Elite Grassroots Coach	Male	Black British
Interview 12	Harry	Ex-Professional Player and Coach	Male	Black British
Interview 13	Marcus	EDI Practitioner	Male	Mixed Race
Interview 14	Richard	EDI Practitioner (Football)	Male	White Mixed
Interview 15	Michelle	HR Practitioner (Football)	Female	White British
Interview 16	Cara	EDI Practitioner (Football)	Female	Not Disclosed
Interview 17	Malcolm	EDI Practitioner (Football)	Male	Not Disclosed

Objective Three also involved desk-based research to analyse the extent to which the EFL's Recruitment Code fits within the legislative framework and the extent to which the Recruitment Code can be considered an example of effective reflexive regulation. Data from the focus groups and semi-structured interviews was also used to inform this Objective. Interviews with Academic

Researchers and EDI Practitioners fed into the legal analysis of the EFL's Recruitment Code as a form of positive action. Further, the views of participants on the development and content of the Recruitment Code informed the analysis of the Code in light of Hepple's (2011) three interlocking mechanisms for reflexive regulation, which is considered in detail within Chapter Seven.

Finally, Objective Four drew on desk-based research and the focus group and interview data. The emerging themes from the participants' views of the EFL's Recruitment Code were considered alongside the results of the legal analysis, in order to determine whether the Recruitment Code is likely to be successful in increasing the representation of BAME managers and coaches. This was also used to suggest a series of pointers for action to increase the success of the Code, considering ways in which research participants felt that it should be amended, alongside the outcomes of the legal analysis.

3.8.2 Sampling

The researcher began recruiting participants through purposive sampling, by directly contacting potential participants to request their involvement in the research. Tongco (2007) argues that purposive sampling "is most effective when one needs to study a certain cultural domain with knowledgeable experts within" (p. 147). As such, purposive sampling was appropriate for this research, which required participants who were stakeholders in relation to BAME management and coaching in football, or equality and discrimination law. Once the data collection process began, snowball sampling was also used, with many of the participants recommending other individuals for the researcher to contact. This was particularly beneficial in enabling the researcher to access a BAME grassroots coaching network, aligning with Noy's (2008) argument that snowball sampling is a particularly effective means of accessing "hidden populations" (p. 330) and "in the research of organic social networks" (p. 340). Whilst the sampling methods used within this research mean that the findings cannot be generalised to a population, it ensured that the participants involved in this research were relevant to the

research questions, and that a range of participants were included (Bryman, 2012). This further enabled the researcher to consider whether participants' opinions may have been affected by their level of involvement in the game, as well as the extent to which they can be considered a stakeholder in this context, and what impact this might have on their views of the EFL's Recruitment Code. The difficulties associated with the sampling process are discussed in Section 3.10.1 below.

3.8.3 Data Analysis

During the data collection process, all participants gave consent for the focus group and interviews to be audio recorded. The audio recordings were then transcribed by the researcher verbatim. The transcripts were uploaded to data analysis software, Nvivo, and analysed using grounded theory developed by Glaser and Strauss (1967), which was particularly important given the research's inductive nature. The transcripts were coded, which is described by Bryman (2012) as "one of the most central processes in grounded theory" (p. 568). Coding the data involved "reviewing transcripts... and giving labels (names) to component parts that seem to be of potential theoretical significance and/or appear to be particularly salient" (Bryman, 2012, p. 568). As outlined, the focus group data was analysed before the semi-structured interviews were conducted, in order to provide some initial themes to be explored within the interviews.

Cousin (2009) suggests an approach to the coding of data that was broadly followed within this research. Cousin (2009) states that the first stage is "fairly descriptive" (p. 49) and focuses on first readings of the data which look only at what the participant says. This involves assigning provisional labels, following Delamont's (2002) advice to code the data "densely and speculatively" at this stage (Cousin, 2009, p. 52) and this approach was taken on the first readings of the transcripts within this research. The second stage of the coding process involves identifying "core categories" (Cousin, 2009, p. 52). These core categories are generally recurring themes that are critical to the experience and broadly capture the essence of the data (Cousin, 2009). In this research,

examples of core categories emerging from the data at this stage included 'Barriers to BAME Coach Progression' and 'Perceptions of the EFL's Recruitment Code'. Cousin (2009) states that third stage is the creation of "sub-categories", which are "properties of the core categories" (p. 52). The creation of sub-categories was the next stage of analysis in the present research, with examples of sub-categories emerging from 'Barriers to BAME Coach Progression' including 'Networks-Based Recruitment Methods' and 'Racial Stereotyping', and examples relating to 'Perceptions of the EFL's Recruitment Code' including 'Lack of Transparency' and 'Need for Buy-In'. These categories were used as the basis for thesis chapters, and the sub-categories used to inform sections within these chapters. Following this approach to data analysis enabled themes to emerge from the data, rather than the researcher imposing themes on the data, which further helps to ensure reflexivity and overcome issues relating to positionality.

In addition to the above process, Cousin (2009) also discusses how the data analysis process should involve "Constant Comparison" (p. 53). This includes comparing the initial descriptive categories across transcripts to identify the core categories and sub-categories. Further to this, Cousin (2009) also discusses the need to "look at possible linkages across the categories and creating conceptual hooks that explain these linkages" (p. 53). The process of constant comparison was particularly evident within the present research. In addition to exploring general links between categories and sub-categories, it was also important to explore links between participants; for example, whether participants who work within similar roles (such as EDI Practitioners) shared similar perceptions and experiences, and whether participants who self-defined their ethnicity within the BAME category expressed similar views to each other and/or contrasting views to white participants.

3.9 Ethics

As this research concerned the experiences of BAME individuals, it was of a potentially sensitive nature and therefore it was important to ensure that it was conducted appropriately. External ethical frameworks were considered, such

as the Social Research Association Ethical Guidelines (2003) and the British Sociological Association Statement of Ethical Practice (2017). In particular, it was ensured that the four key areas identified by Diener and Crandall (1978 cited by Bryman, 2012) were addressed. These are:

1. Potential harm to participants - it was recognised that participants were discussing a sensitive area. Accordingly, participants were assured that participation was entirely voluntary, and they were free to withdraw at any time. Where relevant, there was signposting to sources of support; for example, where participants were students, such as within the focus group, participants were provided with the information for Student Support and Guidance
2. Lack of informed consent – the research ensured that informed consent was obtained. Participants were informed about the opportunity to take part in the research and were provided with a Participant information Sheet (see Appendix C), outlining full details of the research and any associated inconvenience. Once this was agreed to, participants were required to sign a consent form to confirm that they understood and agreed to take part in the research (see Appendix D). Participants were also sent copies of their interview transcript and again reminded of their right to withdraw.
3. Invasion of privacy – care was taken to ensure that none of those participating in the research can be identified. Participants were assigned pseudonyms and any identifying pieces of information were excluded from the interview transcripts and not included within this thesis.
4. Whether deception is involved – this research did not involve deception and participation was on the basis of fully informed consent.

Ethical approval was sought for both the focus group and, separately, the semi-structured interviews. Ethical approval for the focus group was sought from the University's Learning and Teaching Institute Research Ethics Committee as the participants were undergraduate students. This Ethic Committee provided feedback which primarily concerned clarifying the impact of the focus group on participants, particularly in relation to them giving up their time and making this clearer on the Information Sheet provided. The Committee also advised ensuring that the focus group took place in a convenient location for participants to minimise inconvenience. Further, it was recommended that a clear definition of 'positive action' was provided at the outset, so that participants were fully informed on the main focus group topic. The amendments suggested by the Ethics Committee were followed and ethical approval was granted. Separate ethical approval was sought for the semi-structured interviews from the University of Chester's Law School Ethics Committee. Feedback from this Ethics Committee outlined the need to ensure that the researcher's voluntary positions and involvement with Kick It Out were made clear, and that it is emphasised in the interview invitations that the researcher does not represent that or any other organisation in this research. The Ethics Committee also advised that a separate sheet should be provided that outlines the EFL's Recruitment Code in a clear and unbiased manner (Appendix E). The suggested amendments were made, and ethical approval was granted for the semi-structured interviews.

In addition to this, Vainio (2013) argues that anonymity is a core principle of research ethics and, as such researchers should include an explicit consideration of anonymity within research designs which describe how and why anonymity was applied. Accordingly, it is important here to provide an overview of anonymity within this research. Despite the importance of anonymity, Moosa (2013) outlines how anonymity can be challenging, particularly within small communities, and ensuring anonymity did present challenges within this research. The nature of this research is to explore issues faced by BAME managers and coaches, who are currently underrepresented. As such, it was important to carry out interviews with such managers and

coaches, but the current level of underrepresentation means that the community is small and therefore participants may be identifiable. Furthermore, providing a participant's career history can also harm a participant's anonymity, especially when this information is provided alongside their race and/or ethnicity. As such, the researcher has used broad descriptors to categorise participants' roles in relation to the research topic which will make them less identifiable, even when coupled with their race and/or ethnicity. To do this, the researcher grouped roles into the following broad categories: Fan; Academic Researcher; Equality, Diversity and Inclusion (EDI) Practitioner; Human Resources (HR) Practitioner; Elite Grassroots Coach; Ex-Professional Player and Manager, and Ex-Professional Player and Coach. In some instances, participants' roles and experience overlapped the descriptors chosen; for example, some coaching participants had experience in working within the EDI sphere. In such instances, the researcher selected the category that was most salient to the research topic, as dual descriptors may have made such participants more identifiable. Participants with formal playing and/or coaching experience were given a playing and/or coaching descriptor, as this distinguished such participants from those without this experience. It is acknowledged here that these broad descriptors and lack of multiple descriptors may underplay the significance of some participants and their roles; however, this approach was necessary in order to maintain anonymity.

3.10 Reflection

McClinktock, Ison and Armson (2003) argue that "reflecting on research practice can enhance its transparency" (p. 715). As such, it is important here to reflect on the method and process utilised within this research. This section firstly reflects on issues faced during the data collection process; it then considers the approach taken to categorisation and terminology throughout this research and, finally, considers "race wrestling" (Pollock, 2004, p. 25) and issues pertaining more specifically to research that focuses on race.

3.10.1 Data Collection and Sampling

Firstly, with regards to sampling, whilst a range of participants were interviewed, including fans, EDI practitioners, former players and managers, the researcher was not able to interview any representatives from the EFL. Interviewing an EFL representative would have added an additional perspective to this research and provided further insight into the consultation and drafting processes behind the introduction of the EFL's Recruitment Code, which formed a key part of the discussion within this thesis. Further, whilst one club representative was interviewed within this research, it would have also been beneficial to speak to further clubs, particularly those taking part in the pilot. Interviewing pilot clubs to explore their perceptions of the Recruitment Code both before and after the pilot would have added a further dimension and insight into how the Code operates in practice. Further, as the general level of understanding of positive action and the EFL's Recruitment Code amongst fans were key areas of discussion, a fan survey would have provided further data on perceptions of positive action, the Recruitment Code, and the extent to which they are both correctly understood.

Whilst expanding data collection to include interviews with EFL and club representatives and fan survey data may have provided further insight into the research topic, obtaining this data would have been challenging. Due to the potentially sensitive nature of this research topic, data collection opportunities in this field are limited, with McGurk et al. (2019) arguing that there are "extraordinary challenges surrounding access to data in this area" (p. 3). Further, ensuring that there were sufficient responses to a survey in order for the results to be significant would have also been challenging. As such, it was decided that the researcher would focus on obtaining depth through semi-structured interviews with stakeholders who were experienced in football coaching and/or EDI, rather than seeking breadth through obtaining survey data which may have provided a broader overview of fan perceptions.

3.10.2 Categorisation and Terminology

A key issue in research relating to race concerns categorisation and terminology. In this research, one of the main challenges to determining the best research approach centred on whether or not research participants should be given the opportunity to define their own race and/or ethnicity. In this research, participants were given the option to self-define. Modood, Berthoud and Nazroo (2002), however, argue in favour of “family origins over self-assignment as the decisive criterion in assigning primary group membership” requiring “some sense of collective subjectivity”, i.e. that others from that group “have to accept that s/he belongs” (pp. 423-424). As such, the approach taken in this research could be criticised as the definitions provided by participants were taken at face value and not explored further for “collective subjectivity”. Furthermore, Burton, Nandi and Platt (2010) argue that self-definitions can be impacted by participants “‘learning’ the expected response”, which “potentially increases the stability but not necessarily the meaningfulness” of the responses provided (p. 1341). This again may have implications for the present research if the responses provided were given as a result of participants learning what is ‘expected’ of them. Because of this, a different approach to obtaining participants’ race and/or ethnicity could have been used within this research; for example, participants could have been asked to select from the Census 2011 categories. Alternatively, Modood et al. (2002) argue in favour of using participants responses to “questions about cultural opinions and behaviours, and experience of racial discrimination and harassment” alongside self-definitions to provide “a profile of ethnicity” (p. 424) and this approach could have been adopted in this research.

Whilst taking a different approach to categorisation and terminology may have helped to overcome the issues with self-definition detailed above, the alternative approaches outlined would have also presented issues. Bonnett and Carrington (2000) argue that requiring participants “to assign themselves to one of a small number racial or ethnic ‘boxes’ is, at best, essentialist and, at worst, racist” (p. 487). They further argue that the use of self-definitions allows for greater flexibility. Arguably, this can be seen within the present research,

where some participants went beyond the categories provided in the Census; for example, Ashleigh, who described herself as “Black or Mixed Race” and preferred not to choose one or the other. This also demonstrates how the approach taken enabled the terminology used to describe each participant to have greater acceptability to that participant, something which Aspinall (2002) argues is one of the most important considerations in deciding which terms to use. Acceptability to participants may have been limited if participants had been required to choose from a limited number of categories or had a category imposed upon them. As such, whilst in hindsight an alternative approach may have provided greater consistency and “collective subjectivity” (Modood et al., 2002, p. 423), this approach too could be subject to criticism. It was therefore felt that acceptability to participants should be the paramount consideration and participants given the opportunity to self-define.

Furthermore, it is also acknowledged that whilst participants were given the opportunity to self-define, the collective term ‘Black, Asian and Minority Ethnic’ or ‘BAME’ was adopted throughout this research to describe those that underrepresented at coaching level because of their race and/or ethnicity and those to whom the EFL’s Recruitment Code applies. The use of this collective term conceals “substantial diversity” (Aspinall, 2011, p. 33) and this may be particularly important within the football context, where Asian players, particularly British Asian players, remain significantly underrepresented at playing level, particularly compared to Black players. However, a consideration of the underrepresentation of Asian players in English football is beyond the scope of this research and, further, a theoretical consideration requires a consistent approach to terminology. Whilst using “Black or Minority Ethnic” or ‘BME’ may have more accurately represented the underrepresentation at coaching level compared to playing level, this approach would not have been appropriate as “BAME” is the term used by the EFL throughout the Recruitment Code and is also currently the most salient term within the UK context (see Section 2.2, Chapter Two for a more detailed consideration on why this term was adopted).

Beyond issues relating to categorisation according to race and/or ethnicity, the broad descriptors used to categorise participants in accordance with their experience and roles can also be reflected upon. As discussed in Section 3.9, participants were assigned a broad descriptor that most suited their experience. These descriptors that were created by grouping together the types of roles that research participants held. Assigning participants these broad descriptors may have underplayed the significance of some participants and the role that they play in their field. Further, participants were assigned one descriptor based on their most salient experience, which means that nuances amongst participants who have experience in more than one field could not be explored. However, whilst these broad descriptors may have limitations, this approach was most appropriate in order to safeguard anonymity, as outlining participants' career history in greater detail would likely have made them identifiable, particularly as the number of BAME managers and coaches is very small.

3.10.3 “Race Wrestling”

In addition to issues regarding terminology and categorisation, it is also important to reflect upon the questions that participants were asked regarding 'race'. Within this research, participants were asked to consider the extent to which 'race' impacts upon experience as a player and coach. However, participants were not explicitly asked to consider what 'race' means to them. Furthermore, Pollock (2004) argues that researchers should engage in “race wrestling”, to “purposefully and explicitly” discuss “dilemmas of race talk and analysis” that occur through their research, rather than shying away from such discussions (p. 26). Because of this, in hindsight, it is acknowledged that the researcher could have engaged participants in more explicit discussions on what 'race' means to them, as well as when it does and does not matter. However, this approach would also have presented challenges. Pollock (2004) argues that “researchers often attempt to solve the problem of determining how race matters... by simply asking respondents quickly to tell us” (p. 46); however, this can be criticised as it often overlooks the “strategic nature of race talk” that centres on the idea that “race should not really matter or should only

matter at certain times” (p. 46). As such, simply asking participants in this research to discuss how and when ‘race’ matters and relying solely on verbal responses to these questions may have provided limited meaningful data. This may have also been exacerbated by the researcher’s positionality as a white researcher, as discussed in Section 3.7 above. Pollock (2004) argues that it is important that researchers consider “the subtle hesitations, stutters, arguments and denials” present within interview responses (p. 47), as well as the ways in which participants engage in “race talk” in response to other questions (p. 25). Furthermore, whilst this question was not explicitly asked of participants, many participants did refer to instances and occasions where ‘race’ matters more than others; for example, some participants discussed how their race mattered less as a player than as a coach.

3.11 Dissemination

Throughout the course of this research, the researcher has engaged in a number of dissemination activities as the research progressed. These are detailed in Table 3 below and include the publication of a chapter in an edited collection (Appendix F), conference paper and poster presentations, and media interviews. This has enabled the researcher to share emerging implications from this research, which are outlined in further detail in Chapter Nine.

Table 3: Dissemination Activity

2020	Book Chapter	Using Reflexive Regulation to Increase the Racial Diversity of Professional Football Coaching in England: the EFL Voluntary Code of Recruitment	Bradbury, Lusted and van Sterkenberg (1 st Ed.), <i>‘Race’, Ethnicity and Racism in Sports Coaching</i> . Oxford: Routledge
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2018	Paper Presentation	“You can impose a rule all day long, but if people don't buy it, they'll find ways ‘round it”: Perceptions of the English Football League’s Interview Rule.	Sport and Discrimination Conference, Oxford Brookes University
2018	Paper Presentation	A Theoretical Consideration of European Union and United Kingdom Positive Action Law and Policy, in Light of the English Football League’s Recruitment Code.	Sport and EU Conference, Edge Hill University
2018	Lecture	Levelling the Playing Field? Using Positive Action to Increase the Representation of Black, Asian and Minority Ethnic Football Managers.	Research Frontiers Lecture Series, University of Chester
2018	Poster Presentation	The Use of Positive Action within Football Coaching.	Diversity Festival, University of Chester
2018	Paper Presentation	Emerging Findings on Perceptions of the English Football League’s Mandatory Interview Rule.	Faculty of Social Science Postgraduate Research Conference, University of Chester
2017	Paper Presentation	“Finally, People Are Not Just Talking About It, They’re Actually Acting On It”: The English Football League’s Interview Rule.	Approaches to Inequalities Conference, University of Northampton

2017	Paper Presentation	Tackling Underrepresentation: The English Football League's Positive Action Regulations.	The 10 th Annual Equality, Diversity and Inclusion International Conference, Brunel University
2017	Panel Member	Tackling Racial Inequalities.	Diversity Festival, University of Chester in collaboration with Kick It Out
2016	Newspaper Interview	Tackling Racial Inequalities in Football	Chester Chronicle
2016	Radio Interview	Tackling Racial Inequalities in Football	Radio Merseyside
2016	Radio Interview	Interview on equality, diversity and inclusion initiatives in football	Dee Radio 106.3
2016	Radio Interview	Interview on equality, diversity and inclusion initiatives in football	Radio Shropshire
2016	Radio Interview	Interview on the Rooney Rule and its potential application within English football	Radio Northampton
2016	Paper Presentation	Tackling Underrepresentation: The English Football League's Positive Action Regulations.	Faculty of Social Science Postgraduate Research Conference, University of Chester
2016	Paper Presentation	A Theoretical Consideration of Positive Action and the English	Sport and Discrimination

		Football League's Proposals to Introduce an Equivalent to the Rooney Rule in the UK.	Conference, Leeds Beckett University
2016	Radio Interview	The Rooney Rule	Radio Northampton
2016	Paper Presentation	A Game Changer? The Football League's Proposals to Introduce an Equivalent to the Rooney Rule.	Approaches to Inequalities Conference, University of Northampton
2016	Paper Presentation	A Game Changer? The Football League's Proposals to Introduce an Equivalent to the Rooney Rule	Faculty of Social Science Postgraduate Research Conference, University of Chester
2016	Poster Presentation	The Use of Positive Action within Football Coaching.	Postgraduate Legal Research Conference, Queen Mary University of London

Following the completion of this research, the researcher has been asked to collaborate on a journal article considering fan perceptions of the Rooney Rule and plans to publish chapters from this thesis in relevant peer-reviewed journals.

Chapter Four

Barriers to BAME Manager and Coach Career Progression

4.1 Introduction

Within the focus group and interviews conducted for this research, participants felt it important to discuss the barriers that BAME managers and coaches face, particularly those participants that worked in football themselves. Because of the reflexive approach taken within this research, which seeks to “reflect the voices of those who participate in research” (Bourke, 2014, p. 3) it is considered important to ensure that these experiences and views are presented within this thesis. In light of this, this Chapter contributes to the wider literature that exists on the experiences of BAME managers and coaches (see *inter alia* the SPTT Reports, 2014-2017; Sporting Equals, 2011; Sports Coach UK, 2014; Bradbury et al., 2018). It outlines perceptions of barriers to BAME manager and coach career progression, including higher standards, extra pressure, the impact of role models, the recruitment practices used and the specificity that football has historically been afforded. This Chapter additionally provides context to the following Chapters, which consider the extent to which the EFL’s Recruitment Code is an effective or flawed form of positive action aimed at addressing these barriers.

4.2 Higher Standards

Literature outlining research into the experiences of BAME managers and coaches has identified a perception that BAME managers and coaches must reach and maintain higher standards than their white counterparts, in order to be appointed to coaching roles and to remain in position. Research by Sporting Equals (2011) into the key issues facing entry-level BAME coaches identified this perception as a key challenge faced by such coaches. This was further reflected in research by Norman, North, Hylton, Flintoff and Rankin for Sports Coach UK (2014).

This perception was identified within the present interview and focus group data, with thirteen participants stating that they believe that BAME managers and coaches are held to higher standards than their white counterparts. Alex, an Academic Researcher, stated:

“Black managers are held to a different level of performance” (Alex)

This supports the idea that the performance levels of BAME managers and coaches are viewed differently to those of their white counterparts. When asked about the levels that BAME managers and coaches must reach, Abdul, an Ex-Professional Player and Coach, stated:

“You’ve gotta blow them away, haven’t you, really?” (Abdul)

This suggests that BAME managers and coaches must reach much higher levels of performance, i.e. *“blow [those recruiting] away”*, whereas white managers and coaches do not have to reach such a high standard in order to secure a position. The research by Sporting Equals (2011) outlined above found that respondents perceived one of the key challenges facing BAME coaches was that they “have to be twice as good to make any progress” (p. 21). This was reflected in the research for Sports Coach UK (2014), where one participant discussed BAME coaches as having to be “twice as good as or better than our white counterpart” (p. 22). There was an emerging perception of having to be ‘twice as good’ amongst participants within the present research too, expressed by both those that have experience within the professional game and those that do not. Two participants that do not have professional experience, and thus can be considered ‘outsiders’ in this regard, echoed the more general terminology used within the literature; for example, Philip, who is an Academic Researcher into equality in sport, stated:

“You’ve got to be twice as good a coach to be able to maintain your position” (Philip)

Further, Craig stated:

“I certainly think that in the professional game, that a Black coach would have to be twice as good as a white coach” (Craig)

The above two participants that do not have experience within the professional game did not elaborate on or quantify what is meant by having to be ‘twice as good’, echoing the more general phraseology used within the literature outlined above. However, two participants with direct professional football experience - who can thus be considered ‘insiders’ to BAME manager and coach experience - provided specific examples of the areas in which BAME managers and coaches must be twice as good as their white counterparts. Ade, a Black British Ex-Professional Player and Manager, stated:

“We have to be twice as qualified, twice as credible” (Ade)

This was echoed by Harry, who is a Black British Ex-Professional Player and Coach, who stated:

“I think as a Black coach, it was drilled into me that in order to achieve you must work two times harder than the white coach to be accepted.” (Harry)

The four statements above demonstrate an emerging perception that BAME managers and coaches must perform significantly better than their white counterparts. As outlined, those without experience in the professional game used the more general phrase “*twice as good*”. This reflects the literature outlined above, with both the research by Sporting Equals (2011) and for Sports Coach UK (2014), which primarily focused on entry-level and grassroots coaches, using the general phrase “*twice as good*”. Within the present research, the two participants with direct professional experience went beyond this, providing more specific examples of areas in which BAME managers and coaches must be ‘twice as good’ in practice, namely their qualifications, credibility and work rate, and this direct experience may support

the general perception of having to be two times better than their white counterparts. The notion that BAME managers and coaches need to be “*twice as qualified*” and “*twice as credible*” may link to the perception that such coaches are given fewer opportunities and will be discussed further in Section 4.6 below.

In contrast to the above perception, David, a Mixed Black British Grassroots Coach, who again may be an ‘insider’ in this regard, did not agree. Rather, he felt that BAME managers coaches are not expected to reach a different standard to white managers and coaches, but that BAME managers and coaches do not always make the most of opportunities presented:

“If I was honest, no. If I’m absolutely honest, no, I don’t think they are... I genuinely don’t think we are being asked for anything more. I think what we need to do is be a little bit more organised and a little bit more, erm, switched on when it comes to finding opportunities and exploiting those opportunities to make sure that we have got plenty of people applying” (David)

David did not elaborate on what he meant by being “*more organised*”, nor the types of opportunities involved; however, it suggests a perception that BAME coaches do not have to be ‘twice as good’ but rather a view that they do not always find or apply for positions. Whilst it is important to acknowledge this participant’s views and experiences, it should be noted that there are several pieces of research that have found that it is much harder for BAME individuals to break into established networks and thus access opportunities. This has been found in English football (SPTT, 2014; Kilvington, 2019), football in France and the Netherlands (Bradbury et al., 2018) and the NFL in the USA (Collins, 2007). Given that football largely recruits through closed networks, this can make it much more difficult for BAME managers and coaches to secure positions.

Whilst there is an emerging perception amongst both ‘insiders’ and ‘outsiders’ to the BAME management and coaching experience that BAME managers and

coaches are held to higher standards than their white counterparts in football, it was evident from the data that many participants from both perspectives did not believe that this is unique to football. Many participants discussed their perception that BAME individuals must reach higher standards than their white counterparts in all areas of society, and thus this is replicated within the game:

“I actually think BAME people generally probably... are held to a higher standard and I think that’s in all walks of life. Erm, I was always told by a teacher at school when I was messing around ‘oh you’ve gotta work twice as hard’ and I didn’t know what that meant at the time, but I actually realise exactly what it meant now” (Ade)

Ade’s experience of being told that he has to work ‘twice as hard’ was echoed by Marcus:

“I feel that it’s a general thing when it comes to the Black community, that, you know, you’re told if you’re going to succeed you have to be three times better than your white counterpart and that feeling is based on history of exclusion, the history of being marginalised... the history of not having equality of opportunity... and I think as a result of that, there’s certainly a feeling... of that amongst the Black community” (Marcus)

As with the emerging perception on football coaching, the above views refer to a perception that BAME individuals must outperform their white counterparts in order to obtain similar opportunities in society generally. Whilst participants did not elaborate further with specific personal examples, it is important to acknowledge the importance of such a perception and the extent to which a perception can have as significant an impact as the reality. The idea that BAME individuals must be twice as good as their white counterparts in professions outside of football is also seen within the literature. Research has found this perception to exist in other sports, such as cricket (Malcolm, 2002), and for BAME individuals in a variety of professions outside of sport, including writing (West, 1998), nursing (Dhaliwal and McKay, 2008) and higher education

(Griffin, Pifer, Humphrey & Hazelwood, 2011), amongst others. Indeed, Chloe drew on her own experiences of researching into the higher education sector to demonstrate that these perceptions are not unique to football:

“Certainly, the perception of Black staff in higher education is that they have to overperform to even, even get anywhere close to being viewed as being equivalent to their white counterparts” (Chloe)

Whilst there is an emerging perception that BAME individuals must reach higher standards than their white counterparts in areas beyond football, one participant argued that although these higher standards may be found within society generally, the impact of this is particularly heightened within football:

“It’s incredibly hard for Black coaches. It’s not just in sport, in football, it’s just life, you know, when you’ve become racialised on a daily basis and you have to justify that you’re competent in an environment where people are judging you according to your racial profile rather than your ability. But it’s so stark in football... win on a Saturday everyone thinks you’re brilliant, lose on the Wednesday and everyone thinks you’re rubbish and fans are very passionate too so... if fans are angry or frustrated they’re going to draw on all kinds of potential explanations to justify that anger and one of them will be race” (Philip)

The above demonstrates a perception that whilst similar barriers exist within society generally, these barriers are even more evident within football due to the ingrained connections that fans have with the sport and thus the resulting heightened emotional reactions. This perception appears to highlight the unique nature of football, as whilst similar barriers may exist for BAME individuals outside of football, the fact that there is a fanbase whom rely on the performance of BAME managers and coaches means that these are more evident.

4.3 Extra Pressure on BAME Managers and Coaches to Perform

Given that BAME managers and coaches are expected to reach higher levels of performance than their white counterparts, when such coaches are successful in obtaining coaching or management positions, this leads to extra pressure to perform and reach those standards (SPTT, 2014). In addition to this, as there have been relatively few BAME managers and coaches within the English professional leagues, those that are in position are often perceived to be representing their race or ethnicity and as such any 'failure' is attributed to their race (SPTT, 2014). Furthermore, research into both the views of fans (Cashmore & Cleland, 2011) and elite level minority coaches in England, France and the Netherlands (Bradbury et al., 2018) found a perception from both those within and outside of the game that because failure is attributed to race, BAME managers and coaches are given fewer 'second chances' once they have 'failed' than their white counterparts.

Whilst many participants within the present research discussed the importance of role models for aspiring BAME managers and coaches (discussed further in Section 4.4), many participants also discussed the added pressure that comes with being seen to represent your race or ethnicity, particularly as the number of BAME managers and coaches is still relatively low. Ade, a Black British Ex-Professional Player and Manager discussed the extra pressure that this adds:

"Other managers aren't representing their race and their ethnicity. We are representing... There's enough pressure on a manager without carrying the weight of expectation" (Ade)

As Ade was employed as a manager within the professional game, this suggests that he felt extra pressure to perform as he was perceived to be representing his race and ethnicity and thus had a higher level of "expectation" placed upon him. This perception was echoed by two further participants, who both referred to a perception of feeling "lucky" to be in that position and thus

not wanting to disappoint. Harry, a Black British Ex-Professional Player and Coach stated:

“Black and Ethnic Minority coaches and managers... [are] under more pressure to achieve if they do get lucky and are appointed to a role, as they are looked at as the one who will be successful and hold the dreams of all Minority coaches on their shoulders” (Harry)

Similar to Ade who refers to “*the weight of expectation*”, Harry’s perception of “[*carrying*] the dreams of all Minority coaches on their shoulders” appears to further demonstrate the extent of the pressure that BAME managers and coaches feel is placed upon them. This was also reflected by Ashleigh, who had not worked as a manager or coach:

“I think because you’re in a minority, you’re automatically under a spotlight... you’ve got an extra burden, you feel like you’re lucky to be in that position and there’s added pressure because you’re basically working on behalf of so many other people who are not in the position you’re in” (Ashleigh)

Ashleigh’s reference to BAME managers and coaches feeling “*lucky*” to be in a position and representing those that have not been able to secure such a position suggests that the perception that BAME managers and coaches have extra pressure placed upon them may be evident amongst those that have not managed or coached within the professional game too.

Because of the extra pressure placed on BAME managers and coaches, Harry discussed his own experiences of a greater focus being placed on the race and ethnicity of BAME managers and coaches than their abilities in the role:

“I recall a colleague who was appointed to a role who was fed up with answering questions about being a Black manager, and not the result of the game they were supposed to be discussing.” (Harry)

This suggests an emerging frustration with the emphasis and thus pressure placed on BAME managers and coaches as a result of their race and ethnicity. Linking to this, David discussed his desire for the BAME 'label' to be lost:

"You want to be unconscious to it, where actually we don't see Chris [Hughton] as a Black manager, we see him as a manger, yeah a good manager with a good reputation.... I do get frustrated, I think that prefixing it with BAME sometimes is actually a millstone around our necks, erm because actually that puts the, that puts the question mark into the conversation" (David)

This suggests a wish to move towards a post-racial 'colour-blind' society, whereby race, ethnicity and/or skin colour is no longer 'seen'. Whilst this participant expressed a desire for the BAME 'label' to be lost in this context, as seen throughout this thesis, all interview participants within this research supported the general introduction of specific initiatives aimed at increasing the representation of BAME managers and coaches. This suggests that whilst colour-blindness may be the ultimate goal, at present the extra pressure that BAME managers and coaches face, in addition to the further barriers detailed throughout, means that there is support for the 'label' to be kept until such a time that these initiatives are no longer needed. This aligns with a substantive approach to equality, which Fredman (2005) argues focuses on disadvantage associated with protected characteristics, such as race, and requires "a positive duty to provide" to overcome such disadvantage (p. 163).

In addition to this, some participants discussed the extent to which this extra pressure acts as a barrier to BAME coach career progression. Ade stated:

"In terms of managing that, that monkey on your back, plus the need to get a result on your Saturday, that's a lot for a young manager or an inexperienced manager." (Ade)

This suggests that this extra pressure is a heavy burden on young or inexperienced BAME managers whilst also dealing with the general pressures

of the job. This is particularly significant given that, as a result of the barriers to BAME manager and coach career progression raised throughout, BAME managers are more likely to be new and inexperienced and thus will have this added burden. Linking to this, Harry argued:

“The ripple effect is the lack of desire that BME players have to become coaches as they witness what their peers experience” (Harry)

However, whilst a clear recurring theme from the data was a concern for BAME managers in light of the additional pressure they are perceived to be under, and despite his comments above, Ade, who is Black British and worked as a professional football manager, stated that this extra pressure did not affect him when he was actually in the position:

“When I was in a job... I was never aware of being a BAME manager, so even though at the time there were only six or seven of us... I don’t think it affects you in your daily work, ‘cause you just get on with the work. It’s a 24/7 job anyway so you haven’t really got time” (Ade)

This suggests that the perception that BAME managers are under additional pressure to perform may be of greater concern to those that are on the ‘outside’ than to those employed as managers. Whilst this could mean that the perception of extra pressure on BAME managers does not limit the career progression of such managers, the above view outlined by Harry, who is a former player, on the “*ripple effect*” suggests that the perception alone may be sufficient to deter BAME players from aspiring to be coaches. In addition to this, whilst Ade did not feel any additional pressure to perform, he stated that he was aware of how his race may impact the way in which his performances were viewed:

“I don’t think it affects you other than that I guess that when the ball’s kicked and you’ve won or lost on the Saturday night, the enormity of the emotions you feel, it’s probably heightened because you think ‘oh no, if I’m struggling with this, I know how that’s seen’” (Ade)

The above suggests that whilst Ade did not necessarily feel any extra pressure himself, he perceived that occasions when he was “*struggling*” would be attributed to his race. Whilst Ade did not believe that this affected him whilst he was in the position, he stated that the enormity of the emotions was “*heightened*” as a result. As such, this may support the perception of those on the ‘outside’, that BAME managers and coaches face additional burdens because of their race or ethnicity.

4.4 Role Models

As outlined above, a clear theme from the data was the extra pressure that BAME managers and coaches face once they are in positions, because they are often viewed to be representing their race or ethnicity. Further, within the literature on underrepresentation more generally, the notion of “killing the king/queen” suggests a process in which someone looking up to role models or mentors extracts “knowledge, networks and capital... and then eliminates or displaces him/her” (Morley, 2013, p. 125). Despite this, many participants discussed how important it is to have BAME managers and coaches to act as role models, as well as the impact that a current lack of BAME coaching role models has. The lack of BAME role models at all levels has been identified within the literature as a significant barrier to BAME coach career progression. Research by the SPTT (2014), into ethnic minorities and coaching in professional football in England found the lack of BAME role models to be a “a key disincentivising factor” to aspiring BAME coach career progression (p. 17). This was also found in research into minority coaches in England, France and the Netherlands by Bradbury et al. (2018). Additionally, a lack of BAME role models at coaching level has been found to be a barrier in sport generally (Sporting Equals, 2011; Norman et al. for Sports Coach UK, 2014).

In the present research, many participants discussed the importance of role models in mitigating disadvantage in general terms:

“Role models are huge, huge” (Andrew)

Other participants went further and expanded upon why it is important to have BAME role models and mentors:

“It’s someone they can go to... if they’re experiencing issues which other people might not understand... there’s so many BME players in academies now and if they’re experiencing issues which relate to their cultural background, or they might be experiencing racism or anything like that, it’s good that they have someone that, like, they can see themselves in” (Ashleigh)

This suggests that it is important for BAME players, particularly in academies, to have someone *“they can see themselves in”* that they can speak to if they experience racism or an issue relating to their cultural background. Abdul, an Ex-Professional Player and Coach, outlined his own personal experience in this regard:

“I just think it’s important [to have role models]. I think it’s so important but, like, no one actually understands the importance of it more so than me, because... I [was] a young Asian lad coming into an environment where there’s just no Asian representation, and that’s massive... Like it’s that comfort, isn’t it? I went through a 17-year career and I didn’t have any of that and, like, I think people underestimate that, because it helps. Because I’m there worrying about performing, getting fitter, getting stronger and these are things that are really difficult to contend with, but then you add the fact that you are different... Having someone at the club as a role model... there’s my comfort there. I think it’s very important. Very, very important” (Abdul)

Abdul explains that having someone at his club as a role model would have been his *“comfort”*, suggesting that it would mean that he did not have to worry about the fact that he is different. In particular, he refers to the fact that there was no *“Asian representation”*, suggesting that it is more than just having a BAME role model but having someone of a similar ethnic background to him that is particularly important. Linking to this, because of the importance of role

models, the fact that there is currently a small number of BAME managers and coaches, thus a small number of potential role models, was clearly identified by many participants as a barrier that aspiring BAME coaches face. Andrew stated:

*“As a young Black coach my role models are very, very scarce”
(Andrew)*

The impact of this scarcity of role models was also discussed by Craig:

“Without success stories, there is a glass ceiling whether we like it or not, and so until you can see somebody with success break that ceiling, it becomes very, very difficult” (Craig)

Craig suggests that the lack of high-profile success stories regarding BAME managers and coaches, and the resulting lack of BAME role models, reinforces a perception that there is a “*glass ceiling*” for aspiring BAME managers and coaches. Alex discussed this further:

“it’s important for players... to be able to look up to a coach, so if you’ve got a Black or Asian player and all the coaches are white or whatever, they might think that career progression is like a cul-de-sac, they can’t go down that route” (Alex)

The view that the lack of role models creates a perception amongst aspiring BAME managers and coaches “*that career progression is like a cul-de-sac*” and that such coaches “*can’t go down that route*” is similar to Craig’s view above, that the lack of role models creates a “*glass ceiling*”. Similar themes have been identified within existing research into this topic. Research by the SPTT (2014) found that “the lack of BME coach role models... in professional football in England [has] acted as a key disincentivising factor in limiting the aspirations, ambitions and motivations of BME former players to undertake coach education qualifications and pursue coaching careers” (p. 17). This appears to align with the perception emerging from this research that the lack

of role models creates a “glass ceiling” or a “cul-de-sac” for aspiring BAME coaches. A similar theme was also identified in research by Bradbury et al., (2018) into the experiences of elite level minority coaches in professional football in England, France and the Netherlands, which found that “interviewees in all three countries drew attention to the significant disincentivising impact of the continued lack of minority coach role models” (p. 331). Beyond the football context, these perceptions also appear to align with the maxim ‘you cannot be what you cannot see’, which highlights the importance of visible role models for those from underrepresented groups and has been explored in areas such as women’s leadership in medicine (Cordonnier, Coutts, Johnston & Rost, 2019) and racial diversity in classrooms (Simons, 2000).

As well as a lack of BAME role models being a barrier for aspiring coaches in that they are not able to see themselves represented, one participant also discussed how the lack of “success” stories can deter clubs from hiring BAME coaches:

“Every club sees the benefit of BAME players, because they’re at every club, you know, if you go to every club in the country, probably in the world, there are Black players... who are playing football, so they’ve seen the benefit of that. But because there’s not been that successful, and whether that’s because the players... haven’t been allowed to have that chance to go into coaching, they haven’t seen that success, so because they haven’t seen that success, I think that’s what’s held, held them back” (Craig)

This appears to suggest a perception that the lack of BAME role models and high-profile BAME managers and coaches reinforces the conscious or unconscious stereotypes that decision makers at clubs may have around BAME individuals’ abilities to coach. A similar perception was outlined by a participant in research by Cashmore and Cleland (2011), who discussed the impact of “the fact that there haven’t been many [Black people] at the top level”

(p. 1599) as a key constraining factor to BAME manager and coach career progression.

In addition to this, Craig discussed the idea that whilst there are relatively few role models, more could be done to publicise and promote the success stories that do occur:

"I don't think we celebrate the success of diversity too much. I think, you know, we, we should be very proud of, of how we are in the country that, you know, we can have Muslim coaches, you have Black coaches who run clubs, who are very very successful at grassroots and I think... we don't promote that enough, erm, and I'm sure within the professional set-up where you, where we have Black coaches or Asian coaches, or Black or Asian administrators, again we don't promote it enough so actually people from the BAME community don't see it, so when you don't see it, you just automatically think 'well actually, we can't do that'"
(Craig)

Craig argues that there are BAME coaches who run grassroots clubs and that there are BAME coaches and administrators but that this is not promoted enough. As such, he appears to suggest that one way of breaking down the "glass ceiling" created by a lack of the high profile BAME role models is to promote the success stories that do occur, again aligning with the notion that 'you cannot be what you cannot see'.

Given the importance of role models, a clear theme emerged regarding the need to increase the number of role models. Craig further stated:

"We need a Black coach to win a major trophy in football and then suddenly I think the barriers would be broken down... We have to see a Black coach win a major, a major trophy in the professional game and then at that point I think it changes, I think then it would allow people to say 'well do you know what, these coaches could actually make it at the next level'" (Craig)

Craig suggests that the high-profile success of one Black coach would lead to barriers being “*broken down*”, which may refer to the stereotypes that decision makers at clubs hold because of the present perceived limited success of such coaches. However, it is likely that the success of one coach alone would be insufficient to break down the entrenched barriers to BAME coach career progression and other participants referred to the need to have multiple BAME role models. Ian discussed this further:

“If more managers or more people from BAME backgrounds get opportunities, I think what you’ll ultimately see is more people from BAME backgrounds doing well, and that is likely to then increase the number of people who apply for positions, because they will see role models and it will be a career that they think they can enter into” (Ian)

Ian suggests that if more BAME individuals get opportunities and do well, then more BAME people will apply for positions because they will see coaching as a profession that is open to them, rather than the current “*glass ceiling*” or “*cul-de-sac*” created by a lack of BAME role models. Andrew expressed a similar view:

“The more people we start to get in, the more role models we create and then the more Black and Ethnic Minority people can look up to these and think ‘right well if he can do it, I can do it’” (Andrew)

This again supports the perception that the more BAME role models there are, the more aspiring BAME coaches will “*think ‘right well if he can do it, I can do it’*”. Furthermore, the views of the above participants on the need to increase the number of role models are further supported by the SPPT (2014) research that identified the lack of role models as a key constraining factor BAME coach career progression, as this suggests that there is a need for more high-profile BAME role models to help to overcome this barrier.

However, whilst it is important to have more BAME role models, Alex identified the resulting Catch-22 situation:

*“There are a lack of role models which needs redressing, but the only way we get role models is by getting more coaches in the first place”
(Alex)*

This outlines a key issue, that in order for there to be more BAME role models, more BAME coaches need to be able to secure coaching positions. This may then suggest that current initiatives to increase the number of BAME coaches and role models are not working, and thus a different approach, utilising positive action as a form of reflexive regulation, may be needed (see Chapter Five on perceptions of positive action more generally and Chapter Six on the EFL’s Recruitment Code as a form of positive action).

4.5 Racial Stereotypes

A further theme emerging from this research is the constraining impact that racial stereotypes and assumptions about intellect have on BAME management and coaching career progression. Racial stereotyping, of Black athletes in particular, has been researched extensively within the US context, and Billings (2003) summarises these stereotypes as:

(a) the perceived superiority of White athletes in measures of intelligence and work ethic (McCarthy & Jones, 1997; Birrell, 1989); (b) the presumed athleticism (“born athletes”) on the part of Black athletes, in contrast to the presumption of hard work by White athletes (Whannel, 1992; Jackson, 1989; Staples & Jones, 1985); and (c) the identification of White athletes as born leaders... of team sports (Wonsek, 1992). (p. 30).

Such stereotypes have also been discussed in relation to the Rooney Rule in the NFL (Duru, 2008). In the English football context, the SPTT (2014) research has identified stereotypes held by key powerbrokers to be a “key constraining factor” to BAME coaching career progression (p. 17). Further, the research by Cashmore and Cleland (2011) into the views of 1,000 football fans

also identified the perception that stereotypes limit BAME coach progression to be present amongst fans.

Within the present focus group and interview data, many participants discussed stereotypes associated with BAME players and coaches:

“I don’t think necessarily [people] respect... the player as a person and any additional skills they might have beyond just playing football for 90 minutes... I think there’s definitely a disconnect with, like, people’s viewing... BME... people, as like impressive, and they’ve got management skills and they’re intelligent, and those kind of qualities, I don’t know if that exists... I don’t think people would have that sort of perception of BME [people]” (Ashleigh)

Ashleigh suggests that there is a perception that BAME players are not seen as “impressive”, with “management skills” or intelligence. This is particularly notable given that the majority of football managers and coaches have played professional football at some level and thus stereotypes associated with them at playing level may impact upon their managerial or coaching career. Perceptions around race and intelligence and the origins of racial stereotyping in this regard have been discussed extensively (see *inter alia* Fish, 2002; Sternberg, Grigorenko & Kidd, 2005). In the football context, the perception that BAME people are not seen as intelligent or possessing management skills appears to be supported by the research by Cashmore and Cleland (2011), which identified “Entrenched, unconscious, casual racism based on stereotypes” (p. 1599) as a barrier to BAME manager and coach career progression.

Linking to this, Alex stated:

“There’s a lot of stereotypes surrounding Black and Asian coaches that they are not good enough or they don’t have enough experience or abilities... if they fail once then the stereotype becomes further embedded, that Black managers can’t manage” (Alex)

Alex refers to perceived stereotypes that BAME coaches are not competent enough or that they lack experience. Alex did not elaborate on to what “*experience or abilities*” he is referring; however, this may align with Ashleigh’s view on the stereotypes associated with the intelligence of BAME managers, coaches and players. Furthermore, research by the SPTT (2014) found that BAME coaches interviewed believed issues of racism and stereotyping to be commonplace, referring to “physical and cultural stereotypes about BME players and coaches” held by decision makers at clubs, including “Misplaced cultural perceptions with regard to the aspirations, attitudes, behaviours and intellectual capacities” to be a key constraining factor to progression (p. 17). Linking to this, research into the experience of British Asian coaches found that the paucity of British Asian coaches means that such coaches “are not considered the traditional embodiment of a football coach or manager” resulting in them being “racially framed according to external markers such as ‘race’, ethnicity and religion” (Kilvington, 2019, p. 437). This appears to support Alex’s view, that there are stereotypes that impact the career progression of BAME managers and coaches. The view that these stereotypes become “*further embedded*” if a BAME coach fails aligns with the SPTT (2014) finding that decision makers “Negatively [conceptualise] BME coaches in terms of their perceived ethnic and cultural traits” and associate them with “uncertainty” and “risk” (p. 17) as this suggests that failure becomes associated with their race or ethnicity, reinforcing stereotypes that are held.

Harry, who is a Black British Ex-Professional Player and Coach and thus can be considered an ‘insider’ on the BAME playing and coaching experience discussed his perception that, as a player, he was not limited by stereotypes, but as a coach he is:

“As a player my abilities were evident, and the success negates the fact that I am Black, but as a coach [whose] experience is limited, I seemed to suffer so much more” (Harry)

The above arguments are supported by research into the experiences of African American players and coaches in the NFL in the USA. Duru (2008) argues that African American players are presumed to be naturally athletic but to have “intellectual frailty” and that this “completely handicaps the black candidate pursuing a coaching position”, for which intellectual ability is the predominate consideration (p. 181). A similar view has also been expressed by BAME football managers in the British media; for example, John Barnes who said: ‘the stereotype of a black man is that he is a good athlete, therefore, he should be able to run fast, box, sprint, play rugby, play football, we are athletic but can we think?’ (BBC, 2004, para. 37). This again links back to the historic (and prevailing) stereotypes regarding race, athleticism and intelligence and supports Harry’s view above that these stereotypes do not have as significant an impact at playing level, where “abilities [are] evident”, but cause coaches to “suffer so much more” at management and coaching level, where coaching abilities take a longer time to show effect.

In addition to this, Abdul addressed the stereotype that a key reason for the underrepresentation of BAME managers and coaches in comparison to the number of players is that BAME individuals do not want to become coaches:

“A lot of people say, well maybe y’know, maybe Black players don’t want to be managers. But I know a lot of Black players, I’ve played with a lot of Black players, and I know a lot of Black players, and non-players by the way, who, who would love nothing more than to be a coach or manager” (Abdul)

This suggests a different stereotype to those concerning intelligence, in that there is a perception that there is a lack of desire for Black players to be managers or coaches, which Abdul believes to be false. Comments by then-Chair of the FA Greg Clarke that “Afro-Caribbeans... have different career interests” to “South Asians” (BBC, 2020, para. 13) suggest that there are prevailing stereotypes regarding underrepresented groups and career aspirations. Linking to this, a participant within Cashmore and Cleland’s (2011) study suggested that a lack of qualified coaches may be the reason for the lack

of representation. However, the SPTT (2014-17) research states that there is a higher proportion of high-level qualified coaches (8.3%) than there are working within senior coaching positions (4.6%), suggesting that whilst the number of qualified BAME coaches is not proportionate to the number of BAME players, there are a significant number of qualified BAME coaches who are not employed. This supports Abdul's view that the stereotype or generalisation that *"Black players don't want to be managers"* is incorrect.

Andrew discussed the impact of stereotypes on coaches that do obtain coaching positions:

"Instantly [players] judge him because he's of an Ethnic Minority background but then when he starts talking and delivering the session and giving across his coaching points and his information they suddenly realise he knows what he's talking about and once that's the case, he is fine, but it's almost as if he's got to win them over straight away, whereas if you are a white coach I don't think you have to do that necessarily because you, they just automatically assume that you know what you are talking about" (Andrew)

This suggests that, in addition to stereotypes limiting employment opportunities for BAME managers and coaches, such stereotypes can also make it harder for coaches to *"win [players] over"*. Whilst Andrew suggests that these stereotypes can be overcome, it is an additional hurdle that BAME coaches face compared to their white counterparts. This again appears to add to the 'constraining' effect of stereotypes of BAME management and coach career progression that the SPTT (2014) research identified.

4.6 The Limited Opportunities for BAME Managers

A further theme that emerged as a perceived barrier to BAME manager and coach career progression was the perception that BAME managers are given fewer opportunities than their white counterparts, and that once BAME managers are fired from management positions, they are given fewer second

chances to secure another role. This view was expressed by both participants that are BAME and have worked as professional managers and coaches, and white participants that have not.

Philip, an Academic Researcher and thus an 'outsider' to the BAME manager and coaches experience, discussed how perceived failure of BAME managers is attributed to their race:

"It's such an anomaly, if you like, to see a Minority Ethnic coach coaching at the higher level, y'know, race becomes a big issue, race becomes a big factor in that person's managerial career and the decisions that they're making... there's always kind of issues behind that person as to whether... their racial background is what's causing the team to be losing each week and stuff. Whereas of course we never make those judgements about white coaches at all" (Philip)

Philip appears to believe that because of the limited number of BAME managers and coaches, race is a salient issue in the careers of BAME managers and coaches. Because of this, if they experience a period of poor performance, there is a perception that emerges that this is as a result of their perceived inability to do the job because of their racial identity and potentially their associated lack of experience. Malcolm, a further 'outsider' participant who has not worked as a manager or coach, expressed similar views:

"You could appoint a number of Black coaches and if they're not as successful as they would like to be or should be reflected in their coaching ability, they immediately have decisions attached to their performance and their competence" (Malcolm)

Malcolm did not refer to a specific example of where he believes this occurred; however, the perception that BAME managers and coaches *"have decisions attached to their performance and their competence"* because of their racial background aligns with the view expressed by Philip, that perceived failure of

BAME managers and coaches is attributed to their race and/or ethnicity as the reason why they are losing matches.

In addition to this, some participants referred to BAME managers having shorter tenure than their white counterparts:

“Black managers tend to be sacked before white managers are sacked”
(Alex)

Harry, who is a Black British Ex-Professional Player and coach, and thus an ‘insider’ in this regard, echoed this view:

“[Black managers] are often given less time than a white coach as well”
(Harry)

The views of the above participants appear to align with those expressed by John Barnes, who is a former professional manager who managed in England, Scotland and Jamaica. He stated: “black managers didn’t lose their jobs because they were black, they lost their jobs because they lost too many games. However, they did lose their jobs quicker than their white counterparts because they were black” (2020, para. 2). Barnes suggests that whilst Black managers do not directly lose their jobs because of their race, they are given less time as they ‘lose their jobs quicker’ and this appears to support the views expressed by Alex and Harry, suggesting this is a perception that exists amongst those both within and outside of the game. However, it should be noted that there is research that suggests this perception may not be accurate. As referenced earlier, the League Managers’ Association (2015) found that the average tenure of a BAME manager is 1.31 years, compared to 1.23 years for all managers (p.13). Whilst this research may suggest that the perception that BAME managers are not given as much time may not be accurate, it is important to acknowledge here that the fact that this perception exists can also have a limiting and disincentivising impact on aspiring BAME managers and coaches.

In addition to this, many participants within this research also believed that BAME managers are given fewer 'second chances' once they are dismissed from their first roles. Philip stated:

"What I think the evidence suggests... is that once a Black coach loses a job, it's probably much harder for them to then get a second and third job, whereas we can probably think of a few white coaches who get jobs all the time and they're failing and failing and failing and yet they're still getting [jobs]" (Philip)

This suggests a view that once a BAME manager or coach is dismissed from a role, it is *"much harder for them to get a second and third job"*, particularly in comparison to their white counterparts. David discussed a similar perception:

"Black managers tend to be only employed once or are re-employed less, whereas white managers... keep on going on the merry-go-round and keep getting employed, whereas Black managers who fail once tend not to be re-employed and struggle to get back into the game" (David)

The view that Black managers are only given one opportunity and are re-employed less frequently than their white counterparts appears to align with Philip's view, above, and suggests a clear perception that BAME managers are given fewer second chances. This view is also shared by John Barnes, who argues that white football managers "are given repeated opportunities regardless of their previous failures, not many black managers get that opportunity" (2020, para. 3). Furthermore, this perception is also supported by the League Managers' Association (2015) research mentioned earlier, which found that 64.3% of BAME managers have only managed once, compared with 49.1% of all managers who have only managed once (p.11), suggesting that this perception may be accurate and is thus a clear barrier to BAME manager and coach career progression.

Linking to this, Harry raised the idea that BAME managers and coaches are often given more difficult roles that white coaches do not want:

“White coaches can fail and get another job on numerous occasions, this is not it seems available to Black coaches who are often given thankless roles (take Terry Connor at Wolves and Chris Ramsey at QPR, both roles that Black guys got after all the white coaches turned them down) and are expected to achieve against huge odds” (Harry)

The argument that *“Black coaches... are often given thankless roles”* appears to be supported by comments in the media from Les Ferdinand (BBC 5 Live, 2018, cited in Cusack, 2018), who questioned why former high profile BAME players who are looking to move into management, such as Sol Campbell, must start their careers within the lower leagues, whereas high profile white players who move into management, such as Steven Gerrard and Frank Lampard, obtain positions at higher levels.

4.7 Recruitment Practices

The impact of the practices used to recruit managers and coaches within football was discussed extensively by participants within this research and is also found within the literature; for example, reports by the SPTT (2014-2017) have consistently highlighted the recruitment practices used as a key constraining factor to the career progression of BAME managers and coaches in English football. This was also found to be the perception of British Asian coaches in research by Kilvington (2019). Research has further found similar barriers to exist outside of English football, with Bradbury et al., (2018) identifying similar barriers in France and the Netherlands. In addition, there is an established body of research into the impact of closed recruitment methods on African American coaches in the NFL (see inter alia Collins, 2007; Shropshire, 1996).

In this research, Ian, who had not worked within the game, discussed that he believes there is a lack of transparency regarding recruitment:

“For being an outsider, I don’t think you really have a, a true insight into the... actual recruitment process. I mean, I’m not entirely aware of how they employ people... It’s not very transparent and that probably puts people off because you would not even, I mean you wouldn’t consider a career in an area if you don’t know how to get the job” (Ian)

This suggests that the lack of transparency regarding the process discourages people from outside of the industry from applying for jobs as candidates would not consider a sector if they do not know what the recruitment practices in that sector are.

Further, Ade, an Ex-Professional Player and Manager went as far as to suggest that there is a complete lack of recruitment practices in football:

“Well, there aren’t any really” (Ade)

Whilst Ade felt that there is a lack of recruitment practices, Philip believed that recruitment practices exist but are informal and lack transparency:

“Well at the professional level it’s just kind of an open secret isn’t it, that the recruitment practices are very informal and very opaque too... I mean it’s kind of a running joke I suppose where you find the day someone gets sacked lo and behold three days later the new person is in post and so the implication there is that the club have been looking for a replacement for several weeks prior to the person actually being formally sacked, which is a crazy situation” (Philip)

Philip refers to it being an “open secret” that the recruitment practices used within football are informal and lack transparency. He also discusses how appointments are made very quickly, suggesting that clubs look for replacements before the coach that was in position is dismissed. This was also identified as an issue by Harry:

“At this moment a current manager can be replaced within a day by another with no real formal process or procedure having taken place. What other multimillion-pound industry conducts their most important business this way?” (Harry)

Harry’s view that managers can be replaced quickly without formal processes and procedures outlines a clear negative perception on the ways in which recruitment practices operate within football. Further, the question on the extent to which other large industries carry out recruitment in such an informal way has also been discussed within the literature. Bradbury et al. (2018) found that “there was a strong consensus amongst interviewees” that the recruitment practices used within football “differed markedly from and were much less transparent than other areas of public life where there has... developed a much stronger adherence to more formalized equal opportunities approaches to the employment of staff” (p. 326), aligning with Harry’s view.

In addition to this, the idea that a replacement is often sourced very quickly was also discussed by Ian, who said:

“I suppose when you look at quite a lot of the appointments, they seem to have already sourced their manager before the old one goes, and then they come in near enough the next day” (Ian)

The above suggests a perception that clubs do not start with an open mind and do not conduct full and open recruitment processes, but instead ‘hand-pick’ their next manager. This was echoed by Ashleigh, who said:

“it’s quite interesting even to see how positions are advertised in football, it’s, a lot of the time they’re put up for a short period of time. Erm, a lot of the time they’re not publicised widely” (Ashleigh)

This refers to the lack of advertisement of management vacancies, which appears to support the idea that clubs know who they want to recruit without running a full recruitment process. This was supported by another participant,

who felt that clubs generally do not advertise their management and coaching vacancies, nor run full recruitment process, but instead recruit through existing networks:

“I think on the whole football tends to pick up its people through its own networks, or... very rarely recruit openly in potent processes... some of the coaching posts tend to go out but have a fairly limited, extended invitation process for applications to be received. I think very often people know who they want and appoint them, certainly when it comes to appointing managers it's a very simple process” (Harry)

The perception that recruitment often takes place through networks has been identified within existing literature. Research by the SPTT (2014) argues that professional football “remains heavily reliant on networks rather than qualifications based methods of coach recruitment”, in particular coaches are selected “from within the dominant social and cultural networks of the football industry” which ultimately means that coach recruitment at professional clubs continues to be largely premised on ‘who you know, not what you know’ (p. 11). This was also found to be the case in England, France and the Netherlands in research by Bradbury et al., (2018).

The perception that football recruits through networks was consistently reflected within the present research. One former professional manager discussed their perception that clubs do not run full recruitment practices but instead rely on word-of-mouth recommendations to help them to handpick their next manager:

“Very few start with a blank sheet of paper and say ‘right, we'll just put it out there, see what the application is and go from there’. Very few if any do that. Normally it's the club, they'll... just take word of mouth. They'll see people. They'll get bombarded with agents and people recommending this manager. Other managers ringing on behalf of other managers who are their friends... we know what's like, that's the culture... that's the practice in football” (Ade)

This is again supported by the SPTT research, as well as research by Bradbury (2018) who referred to “social and cultural ‘insider’ recruitment networks of the professional football industry” (p. 18). In addition to this, this same participant argued that this is the way football has operated for a number of years, and that whilst there are now some minimum qualification requirements, the networks-based method of recruitment still operates:

“I think the minimum requirements have come in in terms of coaching badges... And once upon a time, that didn't count for an awful lot. You could do them, but it wasn't mandatory to get a job. Basically, someone else got a job, rang you up because you're a mate and says do you fancy coming working with me, that was it. And that was the requirement. This, now don't get me wrong, that still goes on. That still goes on, but the culture is changing slightly now” (Ade).

Two further participants described the process in similar terms, echoing the perception that managers and coaches are recruited through their networks and connections, rather than through an open process that considers experience, qualifications and knowledge:

“My understanding of the process is, only goes as far as the coaches who are in and out of employment at the moment and what they've told me so... you know they've told me your mate gives you a call and says ‘do you fancy it?’ You know and you can of course... find jobs on the EFL website, Premier League website, erm but... certainly in the first team... it's to do with who you know rather than what you know” (Marcus)

The reference to friends contacting each other regarding positions aligns with the view expressed by Harry:

“For what is a massive sport, the community is small, therefore [it] works with mates employing mates or influencing owners to employ mates

which over the years has caused really good football people to walk away from the game” (Harry)

These perceptions are supported by the research undertaken by Bradbury et al., (2018) into the experiences of elite level minority coaches in England, France and the Netherlands, where it was found that within all three countries, there is a “heavy reliance” on networks-based methods of recruitment, with “senior coaching positions... largely premised on processes of personal recommendations, sponsored mobility and patronage enacted by key power brokers” (p. 326). In addition to this, as outlined above, the idea that it is “*who you know rather than what you know*”, was also identified in the SPTT (2014) research as a key barrier to BAME coach career progression. This specific phrase was also used by three further participants in the present research:

“I think there is definitely a case of it’s, it’s about who you know more than what you know” (Craig)

“It’s very much who you know. The old saying ‘it’s who you know’, it’s not as prominent anywhere else than it is in football” (Abdul)

“I think a lot of the time within football it’s the biggest, it’s one of the biggest who you know industries, I think it’s definitely a case of ‘who you know and not what you know’” (Andrew)

Ashleigh developed this further to consider the impact of this ‘who you know’ culture on the recruitment process:

“if you’re not part of that... I would call it like an Old Boys network, if you’re not part of that, erm, and you’re not receiving the information or you’re not in the know, even if you’re the best qualified person for the job you’re not going to find the job let alone... apply for it and be shortlisted for an interview.” (Ashleigh)

This demonstrates the significant limitations of recruiting through networks rather than open advertisement, as it means that those that are not part of these networks are not even aware of the opportunities and thus will not even be able to apply for vacancies as they do not know that they exist. Further, the reference to “*an Old Boys network*” has also been seen within the literature. A participant within research by Bradbury (2013) referred to football as “an old boys club” (p. 305) and a fan interviewed within research by Cashmore and Cleland (2011) also used this term (p. 1599).

Some participants discussed the impact that closed-networks methods of recruitment have on any aspiring coach or manager that is not part of those established networks, irrespective of their race and ethnicity:

“I think if you’re not part of this network anyway, even despite your background, ethnic background... you’re going to be out of the loop so there are quite a lot of people for example who have not played football, not been in the game but are highly qualified coaches who won’t get a look in for positions because they’re not, erm, as well networked as like ex-professional players” (Ashleigh)

This outlines a view that the use of closed networks-based methods of recruitment exclude anyone who is “*out of the loop*”, including aspiring coaches who may be well-qualified for roles but do not have access to these networks because they have not played professional football. This adds to the emerging negative perception of the ways in which managers and coaches are recruited as exclusionary to anyone that falls outside of these pre-established networks.

Whilst Ashleigh discussed the constraining impact of these networks generally, many participants discussed the impact that closed-networks methods of recruitment have on BAME managers and coaches specifically. Marcus stated:

“it’s about who people know and who they feel they can trust, and there lies the issue, where... if you have a network that does not include

BAME people within it, you're not going to get, you know, great representation of coaches and managers" (Marcus)

Alex discussed how these recruitment methods will exclude BAME managers and coaches if such coaches are excluded from the networks themselves:

"Football is very regimented, and they rely on pre-established networks so if you've got Black and Asian communities which are perhaps segregated to some extent and white communities that are also segregated or very very largely predominantly white, they keep tapping into the same networks and Black and Asian coaches really struggle to really tap into the mainstream structures" (Alex)

This reliance on pre-established networks has been identified within existing research. The report by the SPTT (2014) listed "Over-reliance of professional clubs on 'networks based' methods of coach recruitment" as a key constraining factor to BAME manager and coach career progression (p. 8). Further, the above-referenced research into England, France and the Netherlands found that interviewees believed that these closed-networks based methods of recruitment "tended to militate against potential applicants from minority backgrounds and to favour 'preferred' White candidates with, often, fewer qualifications and less experience" who are part of the key pre-established networks (Bradbury et al., 2018, p. 317). This demonstrates that whilst closed networks can act as a hurdle to anyone that is outside of these networks, these recruitment methods disproportionately impact BAME coaches who have very limited opportunities to break into these networks. Furthermore, research into the views of British Asian coaches found that 12 out of 15 survey participants felt that "a lack of networks was a key barrier to inclusion, the most frequently selected barrier of those listed" (Kilvington, 2019, p. 439).

Linking to this, whilst many participants discussed the impact of these networks on managers, Malcolm discussed their impact on coaches, who are often brought into clubs alongside the appointed manager:

“The appointed head coaches or managers bring their own teams in, and because historically they all operate within the network, because they all know each other, they all move around from one club to another and it’s been very hard work for Black, Asian and certainly women, disabled people, to make any inroads, during any open recruitment practices” (Malcolm)

The above perceptions represent the Catch-22 situation which many participants alluded to, whereby closed-networks are relied upon, but BAME managers and coaches are not given the opportunity to break into these networks. This Catch-22 situation has been identified within research into the experiences of African American players and coaches in the NFL, particularly prior to the introduction of the Rooney Rule. Collins (2007) argues that hiring practices within professional sports are “fraternal”, with lists of candidates drawn up from traditional networks, which “like many other social networks... often [leave] out African Americans” (p. 882). As most existing decision-makers within the NFL are white, consequently their networks are drawn from the same racial group.

Whilst the above participants expressed this view without having coached at a professional level, Harry, who is a Black British Ex-Professional Player and Coach, discussed his own experiences of trying to break into these closed-networks and applying for vacancies:

“From my experience people with my characteristics never got to the interview stage, in fact rarely received a reply to the initial application” (Harry)

This suggests that this perception exists amongst those that have not worked within the professional coaching arena and those that do have experience in this regard. Further, this lack of acknowledgement of his application was echoed by a further participant that has not worked as a coach:

“A number of Black coaches over the recent years have said that they have applied for many jobs and very often don’t even get an acknowledgement when they know there are vacancies” (Malcolm)

The above two perceptions support the argument that there are barriers preventing BAME players from breaking into established recruitment networks, and that this perception exists amongst those that have worked as coaches, as well as those that have not. Similarly, Bradbury (2018) argues that these networks-based methods of recruitment “tend to unconsciously favour ‘insider’ (white) candidates with similar norms, values and behaviours” (p.13). Further, the research by Bradbury et al. (2018) found that some interviewees felt that “minorities had traditionally been (and continued to be) marginalized from some distinctly racialized power dynamics within team settings” (p.327). This positions “minorities disadvantageously as ‘outsiders within’ these football work-place environments”, which has resulted in BAME coaches “being less likely than White counterparts to have developed long term relationships with White colleagues, whose own upwardly mobile career trajectories had led to them assuming senior coaching positions at clubs”, enabling them to appoint their own supporting staff (Bradbury et al., 2018, p.327). In addition to this, given that there have been significant numbers of BAME players within English professional football for several years and currently approximately 25% of all professional footballers are BAME (SPTT, 2017), it would follow that a number of BAME coaches who are former players would be part of those networks; but, as outlined in the statistics and interview data, that does not appear to be the case.

Furthermore, many participants within this research also discussed the impact of the lack of racial diversity amongst decision makers within football, as these are the people who are likely to be recruiting through these established networks. Ashleigh stated:

“One of my biggest criticisms [is] the fact that the decision makers at board level, or like Directors of Football, aren’t representative either” (Ashleigh)

Whilst Ashleigh referred to “*decision makers at board level*” and Directors of Football not being representative generally, Craig outlined the specific ways in which he believes that there is a lack of diversity:

“I think one of the problems I see is that, erm, when you look at structure of a football club it tends to be middle class, middle aged, older white males and actually I think the reality is in the world most people employ somebody who replicates themselves” (Craig)

The lack of diversity amongst decision makers within football further exacerbates this Catch-22 situation, and Bradbury (2018) argues that, due to the racial stereotypes discussed above, clubs avoid appointing “potentially ‘problematic’ minority candidates, in favour of falling back on the ‘safety option’ of appointing white coaches” (p. 22). He further argues that decision makers generally appoint people with whom they “have greater levels of social, cultural and professional familiarity and comfort” (Bradbury, 2018, p. 22), aligning with Craig’s view that people seek to employ someone who is similar to themselves. A similar perception was also found within the research by Cashmore and Cleland (2011), within which one respondent stated “People appoint people like themselves. White chairmen appoint white, male managers” (p. 1599). The perceptions from within this research and the literature demonstrate how the lack of diversity amongst decision makers impacts upon the career progression of BAME managers and coaches if the decision makers tend to be “*middle class, middle aged, older white males*” who seek to employ someone similar to themselves.

Given that closed-networks methods of recruitment impact upon BAME managers and coaches that have played professional football, Abdul discussed how those that have not played at this level will face further barriers:

“If you’re a coach who hasn’t [played], and you have a name that’s, you know, of a Muslim, erm, origin, I don’t even think people take you

seriously. No. And that's, that's really horrible to say, but that's a fact."
(Abdul)

This demonstrates a perception that aspiring BAME managers and coaches that have not played professional football will not be taken seriously. Further, the participant's discussion on the limiting impact of a coach having a name that is of Muslim origin has been seen in research outside of the football context too; for example, research by Park, Malachi, Sternin and Tevet (2009) into "subtle ways in which social category information is used differentially in personnel decisions" found that "the Muslim applicant... was unfavourably judged in salary assignment and job-related characteristics in the presence of negative information" (p. 2174). This suggests that there may also be a level of bias beyond presumptions around abilities and knowledge of football.

It should be noted here that some participants perceived the recruitment practices within academy football to be more open and transparent and thus provide less of a barrier to BAME coaches than the recruitment practices used within first-team football:

"Lower down I think there's greater transparency... because it feels like there's less on it.... There's less on a club to run a, you know, a proper recruitment procedure and employ somebody at Academy level rather than, there's a lot on the short-term at first-team level, erm, where results, you know, are needed yesterday" (Marcus)

Marcus suggests that academy football is more open and transparent than first-team football. Craig, however, argued that whilst there may be more racial diversity amongst academy coaches, there is still an underrepresentation of BAME individuals in higher-level academy positions:

"I would... question how it goes once you get above a coach, so if it's Academy Manager, Academy Directors, and how that then feeds into the actual Club and the first-team and so on from there so, I don't think, in terms of coaches, it's, it's erm too much of a problem because there

is enough Black coaches... it's how you would take it above the coaches [to Academy Director level]" (Craig)

The perception that BAME individuals are underrepresented within higher-level positions does appear to be supported by the limited data that is available. The SPTT (2017) report found that only 4 out of 57 U23/U21 Lead Coaches, 5 out of 87 U18s Lead Coaches and 3 out 89 Academy Directors are BAME (p.6). This appears to support Craig's perception that there is underrepresentation of BAME people above coaching level within academies.

4.8 The Specificity of Football

Within this research, many participants alluded to the unique nature of football and sport generally. The uniqueness that the participants referred to may relate to the notion of the 'specificity' of sport, a term used to refer to "the inherent characteristics of sport which set it apart from other economic and social activities" (European Commission, 2016). The specificity of sport particularly relates to the recognition in law that there are features of sport which would ordinarily be unlawful, and this too applies to equality law. Beloff (2012) argues that the rules of sport are distinct to societal norms and, particularly, to the general principles of equality law, in some cases institutionalising discrimination. Further, the specificity of sport and, in this instance, football, means that it has faced limited outside interference; for example, Foster (2019) argues that sporting bodies have used this specificity (or autonomy) "to claim effective immunity from review by national courts and enabled them to maintain a degree of self-governance that is arguably unrivalled among international organisations" (p. 1). As such, practices which disproportionately impact underrepresented groups, such as BAME managers and coaches, have been allowed to continue as outside organisations are limited in the extent to which they can influence change. Whilst no participants in the present research explicitly referred to 'specificity', it is argued here that many participants raised issues which fall under this umbrella term. Although literature such as the SPTT reports (2014-2017) has identified key constraining barriers to BAME coach career progression within football, there appears to be

little existing literature on the impact of the specificity of football on BAME manager and coach career progression, which was a theme that emerged within this research.

Many participants within this research referred to the unique nature of football, which means that things happen within the game that would not happen within other industries. Ade, who worked as a professional manager and thus has direct experience in this regard, stated:

“It’s a closed world, you know, everyone knows everyone... It’s got its own little, er, society, rules and non-rules, you know, things that happen in football from an employment perspective wouldn’t happen anywhere else” (Ade).

The notion that things happen in football that do not happen elsewhere reinforces the perception that football is unique as an industry. This aligns with Foster’s (2019) argument that sport has developed “its own norms and distinctive principles that are solely applicable to the sporting context” (p. 8). This idea, as well as the perception that everyone knows everyone, was echoed by Abdul, an Ex-Professional Player and Coach, who thus also has personal experience. Abdul discussed the notion that things occur in football in relation to employment, and particularly recruitment, that do not happen within other industries:

“It’s a very insular world. You know it’s very, everyone knows everyone in football, and if you’ve had a career in the game, you’ve come across players, managers, coaches, they know who you are. And football is unlike most businesses, it’s unlike most organisations or companies, you know, like if a job comes up at Google or Apple or Sainsbury’s or Tesco, you know, usually you put an advert out and it’s, right, anyone who can do that job will be considered. But I think within football that’s not the case.... I think that it’s almost as if, if there is a job that comes out, it’s people within the community if you like, if you want to call it that,

that will be looked at first, as opposed to people that are outside of the community. (Abdul)

The idea that within football positions are not advertised and anyone who applies and meets the criteria will be considered further supports the emerging theme that football recruits for positions using closed networks, as also identified within the existing research by the SPTT (2015), Bradbury et al., (2018) and Kilvington (2019) referenced above. Further, the argument that *“football is unlike most businesses”* aligns with the view expressed by Ade, that *“things that happen in football from an employment perspective wouldn’t happen anywhere else”*. This is supported by Bradbury et al., (2018) finding that practices used within football “differed markedly” from other industries that have developed “much stronger adherence” to practices that are more aligned with an equality of opportunities approach to recruitment (p. 326). This suggests that there is a perception that football is unique – or *“unlike most businesses”* – in the way that it operates, something which Foster (2019) states that sports organisations have often successfully argued in court, in that “sport is special and that normal rules of law should be interpreted flexibly in their favour or even in some cases ignored completely” (p. 6).

Abdul offered an explanation as to why this may be the case within football and not within other industries:

“How the community is made up is almost on networks and personal relationships, so if I don’t know you, I’ve never heard of you, I’ve not seen you as a player, I’ve not heard about you as a coach, then it’s sort of like... the only information I have on you is what you’ve got on a piece of paper... I think within football it comes down to trust and who you know and word of mouth... It’s very different to, you know, different industries... It’s almost like, if you’re employing within football and someone knows exactly what to expect, there’s not going to be any surprises. They’ve been through it, they’ve seen it, they’ve done it, they can just crack on” (Abdul)

As outlined throughout this Chapter and has been seen consistently within existing literature (see inter alia the SPTT, 2014; Bradbury et al., 2018; Kilvington, 2019) there is a clear perception that football is made up of networks and relationships. Abdul's view on the way in which football operates appears to offer some explanation as to why these networks are relied upon, suggesting that decision makers prefer to recruit from within these networks because they know what to expect. Further, the individuals that are part of these established networks have often played football themselves and thus there is a perception that they have relevant experience that means they can settle into the position easily. Arguably this is something which is unique to football, or at least to the sporting world, and may provide an explanation as to why these closed networks-based methods of recruitment are so prevalent within the football industry, which further adds to the emerging perception that football is unique and has a level of specificity. However, as outlined above, given that there are significant numbers of BAME players, and there have been for some time, it should follow that this would have led to an increase in the number of BAME managers and coaches if recruiters are looking for individuals with experience in the game. As this has not been the case, this further supports the notion that there are additional barriers (discussed above) that specifically prevent BAME individuals from breaking into these networks, such as networks-based methods of recruitment preferring white candidates with "similar norms, values and behaviours" (Bradbury, 2018).

The perception that football does not recruit openly for first-team management positions because of its unique nature and resulting requirements was discussed by Michelle, a HR Practitioner in football, who described the process as "*different*", stating:

"A manager, a first-team manager, it's just different and that's not really a good explanation for it, this is personal opinion but it is a bit different and there are different reasons and they will, if something changes in football like your manager, you need to go and find that manager from somewhere else and sometimes that isn't like a recruitment process that

one of us would go through, it's different, it's still a process but it's different" (Michelle)

The continuing reference to football and the appointment of first-team managers as *"different"* reinforces the perception that emerged from this research that football is unique in this regard and thus faces unique challenges in overcoming issues associated with its recruitment practices. Linking to this, the fact that football has historically been afforded specificity, both generally and legally, raises issues for the introduction of measures that aim to reform such practices, because they have gone unchallenged for so long:

"No-one's ever questioned it, you know, this has been the case for years... If a job comes up it's usually an ex-player or someone that knows someone and it's never really been questioned, only until now and I think only until now because people can look at it and see that there's an underrepresentation of certain, erm, community groups and individuals and people are starting to look at it, but it's never been questioned. So if nothing's ever questioned, it's almost like if it's not broke, why fix it?" (Abdul)

This view suggests a perception that the recruitment methods used within football have not been questioned and because of this, measures introduced to reform these practices may face resistance because *"it's almost like if it's not broke, why fix it?"*. Abdul further argued that this is compounded by the fact that football clubs are generally owned by individuals who thus have significant power and control, which may again be unique to football:

"Ultimately if, if someone buys a football club, they can, you know, effectively employ whoever they want, and I think football has lived and worked in that way for a very long time" (Abdul)

The power that owners have and the fact that they can effectively employ whoever they choose shows how the specificity of football can act as a significant barrier to the career progression of BAME managers and coaches,

particularly given the impact of the lack of diversity amongst decision makers. As stated above, the specificity of sport has been acknowledged for some time, to the extent that the European Commission recognises the characteristics of sport that differ from “other economic and social activities” (European Commission, 2016, p.3) and Beloff (2012) has discussed the way in which this specificity applies to equality law and principles generally. However, many commentators are critical of a solely autonomous approach to sports governance (Meier and García, 2021). For example, Weatherill (2003) argues that the European Commission “is *too* generous to sport” (p. 92), which aligns with Abdul’s view that “*no one’s ever questioned*” the recruitment practices used within football. Further, there appears to be little research on the impact of this specificity on the career progression of BAME managers and coaches and measures aimed at overcoming such barriers. The impact of this specificity, or autonomy, on the introduction of positive action initiatives in particular is discussed further in Section 7.3.1 of Chapter Seven.

4.9 Conclusion

Participants within this research perceived there to be a number of issues relating to the treatment of, and perception towards, BAME managers and coaches which act as barriers to their career progression. Similar perceptions were held by both those that had worked as players, coaches and managers, and thus can be considered ‘insiders’ to football, to those that had not and are arguably ‘outsiders’ in this regard. It was a widely held view that BAME managers and coaches are held to higher standards than white coaches, with almost all participants referring to the perception that they have to be twice as good as their white counterparts. In addition to this, it was a clear theme from the data that as there have been relatively few BAME managers and coaches, those that do make it into employed positions are perceived to be under extra pressure to perform, as they are representing their race. Many participants felt that this acts as a barrier to career progression as this is a significant amount of pressure for BAME coaches to deal with, and if they are not successful once in position, this can then be attributed to their race. Despite the extra pressure that comes with being one of a small number in positions within the

professional game, participants within this research highlighted the importance of role models, and that without role models BAME players and aspiring coaches may perceive the coaching route as unavailable to them. In addition to this, many participants within this research identified several stereotypes associated with BAME players and coaches, regarding athletic superiority and intellectual inferiority. Participants discussed how this acts as a barrier to BAME coaches as it both prevents them from gaining employment opportunities and is an obstacle to overcome once coaches are in positions. A perception that was unique to BAME participants who are former players, and thus can be considered 'insiders' in relation to perceptions of the workings of football, centred on how they were able to overcome stereotypes when playing, but that it is much harder to do so as a coach. Finally, a clear theme emerged regarding the opportunities that BAME managers and coaches are given and the idea that failure is attributed to race. Two participants described their perception that BAME managers are not given as long in positions as their white counterparts; however, the literature did not support this perception (League Managers Association, 2015). One explanation for this perception may be the view that BAME managers are not given second chances as often; this was raised by three participants and was supported by the League Managers Association (2015) research.

It was clear that participants within this research perceived the recruitment practices used to source managers and coaches within the football industry to be a significant barrier to BAME manager and coach career progression. Most participants discussed the closed-networks methods of recruitment used, whereby managers and coaches are appointed on the basis of personal recommendations rather than open and transparent recruitment processes, with a number of participants referring to recruitment as being based on 'who you know rather than what you know', a phrase also used within the SPTT report (2014). Whilst some participants discussed the general impact that this has on any coach that is outside of these networks, such as those that have not played, many participants discussed the specific limiting impact that this has on BAME individuals who are often not given the chance to break into these networks. This aligns with the themes emerging from the literature, such

as Bradbury's (2018) argument that decision makers tend to 'fall back' on white candidates, with whom they "have greater levels of social, cultural and professional familiarity and comfort" (p. 22). It further reflects the Catch-22 situation discussed within much of the research on the pre-Rooney Rule NFL (see inter alia Collins, 2007 and Shropshire, 1996). Importantly, one participant discussed the fact that regardless of whether this perception of closed recruitment is accurate, the perception alone is likely to be enough to deter coaches from outside of these perceived networks. Linking to the issues identified with the recruitment practices, there was a general perception amongst this research that football is unique as an industry and that many of the practices that occur within football would not occur elsewhere. Arguably this is supported by the specificity that football, and sport generally, has historically been afforded and the fact that there has been limited 'outside' regulatory interference. Whilst it is important to recognise the key features that make football unique, many participants perceived that this specificity has resulted in resistance to measures which challenge this status quo, aligning with the view of many academic commentators that are critical of a solely autonomous approach (Meier and García, 2021) and would instead argue in favour of "supervised autonomy", which enables sport to maintain some autonomy whilst acting responsibly (Foster, 2000). In light of this, the subsequent chapters in this thesis will consider participants views on the use of positive action generally (Chapter Five), before considering participants' views on the EFL's Recruitment Code (Chapter Six).

Chapter Five

Perceptions of Positive Action

5.1 Introduction

Chapter Four outlined the barriers to career progression that BAME managers and coaches face. The solutions put in place to assist managers and coaches in overcoming these barriers, including the EFL's Recruitment Code, can be considered forms of positive action, as defined in Section 2.10.1 of Chapter Two. As such, before considering perceptions of the Recruitment Code specifically, this Chapter considers participants' perceptions of positive action more generally. Whilst there exists a body of research which conceptualises positive action and considers its status in law (see *inter alia* McCrudden, 2007; Barmes, 2009; Hepple, 2011), research into perceptions and use of positive action has, until recently, been rare (Davies & Robison, 2016). This could perhaps be as a result of its limited use by employer organisations (Davies, 2015). In 2018, the YWT commissioned research into "the understanding, attitudes [and] use" of positive action within apprenticeships (YWT, 2018, p. i). This has provided a body of research into perceptions of positive action within this area, finding that whilst almost all participants had an awareness of positive action, there was "a lack of clarity and confusion" around the definition, and that this lack of clarity "appeared to encourage resistance to exercise positive action" (YWT, 2018, p. i). Further, a report for the EHRC considering findings of a roundtable discussion on positive action in apprenticeships also found that whilst positive action is "an important additional tool to address disadvantage and tackle under-representation", its use is still limited (EHRC, 2019, p. 9).

As this thesis considers whether the EFL's Recruitment Code is a flawed form of positive action to address racial inequalities within English professional football coaching, it is important to firstly consider perceptions of positive action. This Chapter explores research participants' perception of positive action as a tool to address underrepresentation more generally. It further

explores whether participants' views on positive action differ according to their roles and experience in working with EDI and/or football.

5.2 Support for Positive Action

Participants in this research expressed varying levels of support for positive action, with participants that have greater experience of working within EDI, either as Practitioners or Researchers, expressing strong support for positive action initiatives.

5.2.1. EDI Practitioners

In this research, five participants were categorised as "EDI Practitioners". These are participants that work within EDI in the football sphere, without having previously played professional football or coached at a professional level. Participants within this category were clearly in support of positive action and demonstrated sound understanding of the concept; for example, Ashleigh stated:

"I think positive action should be something that should be seen as wholly positive" (Ashleigh)

This suggests an unequivocal support for such measures as a means of addressing underrepresentation. All of the EDI Practitioner participants expressed similar views on positive action and, in particular, were able to outline the reasons behind their support for positive action and why they view such measures as positive:

"I'm not about giving people a better job... I'm about giving people a level playing field to start off with. If you're not on the field of play, you're never going to win the race if you're stuck outside in the car park... What I'm saying is if your talent is good, you will progress but... can they let you on the pitch first?" (Cara).

The above again suggests clear support for positive action and further offers an insight into why this participant supports positive action, focusing on its use as a means of providing equality of opportunity (“a *level playing field*”) for under-represented groups, as well as distinguishing positive action from notions more closely associated with positive discrimination. This suggests that Cara has an understanding of positive action and what it entails, in addition to some understanding of how this differs to positive discrimination, a concept which is often confused with positive action (EHRC, 2019). It further suggests that Cara supports a substantive approach to equality, which centres around taking positive steps to overcome disadvantage associated with a protected characteristic (Fredman, 2005) as outlined in Section 2.3 of Chapter Two. Similar to Cara’s discussion on positive action, participants within the YWT (2018) research also “used a variety of ‘equality’ focused rhetoric” to define and discuss positive action (p. 32). Further, the reference to creating “a *level playing field*” was also seen within the YWT (2018) research, where the analogy “was referenced on several occasions” (p. 32). The level playing field analogy was also used by Malcolm, who works within the equality in football sector, to explain his reasons for supporting positive action:

“all you’re able to do is apply measures that take you towards fairness, part of that is encouraging people to apply, making known available opportunities, helping people where for instance you’ve got no experience. If you never get the opportunity for experience, then you will never have experience... how are you going to compete equally and succeed?... Once you open up your opportunities then you’re giving people at least a level playing field, with access for them to compete, for them to be seen and heard... as others having credentials that you ought to consider” (Malcolm).

The discussion on using positive action as a means to create a “*level playing field*” and provide “*fairness*” - which was also used by participants within the YWT (2018) research - suggests that Malcolm also clearly supports positive action and has a level of understanding of what positive action entails. This is further supported in his ability to provide some examples of positive action in

practice: *“encouraging people to apply, making known available opportunities, helping people where for instance [they’ve] got no experience”*.

The above discussions suggest that, perhaps unsurprisingly, participants within this research that work within equality in football spheres support the use of positive action, articulated through “equality focussed rhetoric” (YWT, 2018, p. 32) and their support for measures which create a ‘level playing field’. In addition to this, the participants’ provision of examples of positive action measures and, particularly, distinctions between positive action and notions which are more closely aligned with positive discrimination suggests a level of understanding of the two concepts and their differences. Whilst these participants did not elaborate on how they obtained this depth of knowledge on positive action, the idea that those working within the equality sphere are more likely to understand positive action was found within the YWT research. In this, participants that had awareness of positive action were generally EDI Practitioners and HR specialists (YWT, 2018, p. i).

5.2.2 Academic Researchers

Five participants within this research were categorised as Academic Researchers. These are participants who are based at universities and conduct research into either sports equality (Philip and Alex) or discrimination law (Ian, Alice and Chloe). This group is distinct from those who are EDI Practitioners, in order to explore whether there is a difference in the level of support and understanding amongst those that research compared to those that work in EDI. However, it was found that whilst these participants do not work within EDI practice, the Academic Researcher participants within this research were also clear in their support for positive action and, as with those that work within the EDI sphere, were able to provide reasons for this support. For example, Alice, who researches discrimination law, stated:

“I would support positive action in all walks of life because I think it’s necessary. If you believe in full equality in practice, then I think you need

to believe in positive action special measures to ensure that that actually happens” (Alice)

This shows a clear support for positive action and again uses the “equality focussed rhetoric” as reasoning for this support (YWT, 2018, p. 32). The reference to “*full equality in practice*” appears to again support the substantive model of equality, which recognises the need to take positive steps to overcome disadvantage associated with a protected characteristic, rather than a formal approach to equality that argues that protected characteristics should be irrelevant in decision making (Fredman, 2005), as outlined in Section 2.3 of Chapter Two. This further aligns with the approach taken within CRT, which argues that ‘colour-blind’ or race-neutral policies actually perpetuate racial inequality, because the “neutral baseline” that equal treatment or a formal model of equality focuses on (and positive action deviates from) is actually built upon “a regime of uncontested white supremacy” (Crenshaw, Gotanda, Peller and Thomas, 1995, p. xxx). As such, Alice’s view that special measures are required to achieve “*full equality in practice*” aligns with the CRT approach that positive action is a necessary measure that can achieve some degree of racial justice (Crenshaw, Gotanda, Peller and Thomas, 1995).

Similar to Alice’s view that positive action is “*necessary*” in order to provide “*full equality in practice*”, Philip stated:

“if you have the view that people are discriminated against through no fault of their own individual capacities or abilities but from an ideology, something like race or racism, then it would be very odd not to accept that you need to do something about that at a policy level and to try and find ways in which you can change those structural arrangements or challenge the ways in which that system perpetuates disadvantage for certain groups of people. So yes, I am an advocate of positive action” (Philip)

This again shows clear support for positive action and, further, appears to support the view outlined by Alice, that positive action is “*necessary*” in order

to achieve equality and to address embedded and perpetuated disadvantage. This is supported by Manfredi's (2017) argument that positive action is a way of achieving substantive equality, which breaks "the cycle of disadvantage suffered by some groups" (p. 6). It also aligns with the substantive approach to equality centred around taking positive steps to overcome disadvantage as outlined above (Fredman, 2005). Further, the idea that positive action is "a necessary form of drastic action to deal with an embedded problem" was also identified within the YWT report (2018, p. 37).

In addition to this, Philip offered further reasons for his support for positive action when compared with alternative 'softer' approaches to overcoming disadvantage:

"I guess another reason why is because things haven't changed very much over the years, y'know, it's fine to kind of advocate... a softer equal opportunities approach and there are merits in that type of approach, but my argument to that would be, well, where's the evidence that that's actually changed things significantly for groups? So, it comes to a point where you have to try something else" (Philip)

This appears to suggest clear support for positive action as a new and different approach to alleviating disadvantage. The reference to failings of alternative approaches has been discussed within the literature on positive action, particularly into considerations of positive action as an example of reflexive regulation; for example, Fredman (2012) argues that previous complaints-based approaches to addressing discrimination and underrepresentation are limited in their ability to address "structural inequalities" (p. 266) and the way to overcome this is to fashion new legal tools" (p. 265), of which positive action is an example. This supports Philip's view, that positive action is needed because previous softer approaches have not achieved significant change. In addition to outlining reasons for this participant's support for positive action, this discussion also appears to show a clear understanding and acknowledgement of the ways in which positive action can be utilised at a policy level to overcome the barriers that underrepresented groups face.

One similarity between those that research equality and diversity and those that practise is the reference to positive discrimination when discussing reasons for supporting positive action. One Academic Researcher within this research stated:

“What I do not agree with and what is illegal... is when people say that Black and Asian people get jobs simply because they’re Black or Asian, and that’s illegal. What I am in favour of is allowing underrepresented groups and marginalised communities the opportunity to be in the same environment to get those jobs and then it has to be down to a meritocratic basis and it has to be level, so it has to be fair. Whoever gets that job it has to be based on their skills, attributes, qualifications and experience, rather than the colour of somebody’s skin, but I do think that these measures of positive action need to be taken in order to do something to redress the imbalances that there are” (Alex).

Alex has again used the “equality focussed rhetoric” (YWT, 2018, p. 32) within his discussion of positive action and the importance of fairness. Further, he has provided some discussion on the legal boundaries of positive action and positive discrimination. It is perhaps unsurprising that those that research and practise within this area have a greater awareness of the legal limits of positive action, which, as discussed above, was also found to be the case within the YWT research (2018, p. i). This may be because those who are experienced in EDI usually have a greater understanding of positive action and its scope, whereas those that are less familiar often conflate the concept with positive discrimination, which generally has less support. Alex’s reference to positive discrimination may also be a means of qualifying the extent of this participant’s support, in that they are explicit that positive discrimination is something that they “do not agree with”.

Whilst some participants within this research explained their support for positive action by comparing it to notions more closely aligned with positive discrimination, and either implying or explicitly stating that they do not support

positive discrimination, one Academic Researcher participant had a different view:

“I would suggest that in certain situations where there is a significant underrepresentation, I would argue that positive discrimination is required. So positive action is absolutely essential and I would go further... and say that in certain circumstances that positive discrimination would be justified in order to counter the ingrained systematic disadvantage that Black and Ethnic Minority people face in areas such as coaching” (Chloe)

This support for positive discrimination was unique to this participant and no other participant within this research expressed similar views. However, this may support the idea that those that work and research within the equality sphere are more likely to have a greater awareness of, and express support for, measures which go beyond a traditional formal approach to equality, where protected characteristics are considered irrelevant considerations, and instead support measures which are more likely to be considered under a substantive approach. Further, Chloe’s view may be more closely aligned with those who subscribe to a CRT approach. For example, Kennedy (1995), when discussing the number of minority law professors, argues that “completely independently of “merit” as we currently determine it, there should be a substantial representation of all numerically significant communities” (p. 162). This is similar to Chloe’s view that positive discrimination would be justified in instances where there is significant underrepresentation.

5.2.3 Coaches and Ex-Professional Players

Six participants within this research were categorised as Coaches and Ex-Professional Players. In this category, three participants had played football at a professional level and later gone on to coach or manage. A further three participants had not played at a professional level but coach at grassroots level and are involved in a mentoring scheme for coaches.

When asked whether they supported positive action, all participants within this category outwardly stated that they did, for example:

*“I am in favour of positive action, yes. I’m in favour of positive action”
(David)*

When discussing the reasons behind this support, unlike the EDI Practitioners and Academic Researchers interviewed, such participants generally discussed specific examples of positive action in practice, rather than providing a more theoretical discussion on why positive action is needed. For example, David stated:

“Positive action in my view is making sure we get the information out to people so that we can get them into interviews, so we can get them into the room. Positive action is really, really important” (David).

David’s discussion around positive action appears to focus on an interview rule as a specific example of positive action. This will be discussed in greater detail in Chapter Six; however, this does demonstrate a support for positive action in this form. Further, it may also suggest that those within this research that are less familiar with EDI theory and practice define positive action through outlining examples of positive action measures, something which many participants within the YWT (2018) research also “seemed far more comfortable” doing. (p. 32). This may support the idea that those who work within EDI, or are Academic Researchers into equality, have a greater understanding of, and ability to conceptualise, positive action than those that are outside of these spheres.

5.3 Lack of Support for Positive Action

A common theme emerging amongst the above-three categories of participants was a perception that there is a lack of support for positive action amongst the general population and that this is largely a result of a lack of

understanding of the concept. This perception appeared to be demonstrated through the views expressed by Fan participants.

5.3.1 EDI Practitioners

Whilst EDI Practitioner participants were strongly in favour of positive action themselves, many also discussed extensively a perception that there is a lack of support for positive action amongst the general population; for example, Malcolm stated:

“you see positive action, they nearly all just think you’re just going to be discriminating in favour of Black applicants... I think that positive action gets confused very quickly with positive discrimination... I think the first thing you have to say to people when you’re talking about positive action is that positive action does not enable you to appoint someone simply because of their race or colour or gender or disability, it still has to be on merit and the ability to do the job. So whatever you do to help anyone, they still have to compete, and compete on an equal playing field... it is unlawful to discriminate in favour of, as much as it is to discriminate against” (Malcolm)

Malcolm’s reference to “they nearly all think...” suggests that he perceives a divide between “us” and “them”, i.e., those that are experienced in EDI matters and support positive action, and the general population who conflate positive action with positive discrimination. The discussion around the legal boundaries of positive action and positive discrimination was a consistent theme in the YWT (2018) research, where many participants recognised that positive discrimination “fell into the realms of illegality” (p. 33). Further, participants within the YWT research (2018, p. 33) and the EHRC report (2019, p. 49) also made reference to the “conceptual confusion” that exists around positive action and positive discrimination. This appears to support Malcolm’s perception that there is often conflation between the two terms. The conflation of the two terms was referenced by two further participants that work within equality in football, who both discussed their experiences around this. Cara stated:

“People don’t understand [positive action], honestly. I spoke about that, it must be easily five years ago, easily five years ago, and the backlash that I got, well, I was accused of being racist against white people... My opinion about that is it hasn’t changed, to be honest in five years it hasn’t actually changed. When you start talking about positive action, people will still always use the term ‘well that’s discrimination, quotas, and it’s not fair on white people’” (Cara).

Similar to the above discussion, this outlines a perception that there is conceptual confusion around positive action and positive discrimination, as also identified within the YWT (2018) research and EHRC (2019) report. This was echoed by Marcus:

“I think when it comes to positive action, you know, the issue we have is twofold. First of all, because of the word ‘positive’, people automatically think of positive discrimination, which of course is illegal... There’s a big difference between positive discrimination and positive action, which is not only legal but encouraged by law. That’s the whole point of it.” (Marcus)

Again, this outlines a perception that there is confusion between the two terms, and also that Marcus understands the legal boundaries between positive action and positive discrimination. Marcus went on to describe their perception of why positive action is often misunderstood:

“the second part of the misunderstanding of positive action is people don’t see it within context... sort of like we’re all aliens who have just landed on earth and we’re going to give the green aliens instead of the blue aliens an opportunity to be or interviewed or given opportunities... I kind of feel that because people see it that way, they don’t actually understand that positive action is a response to hundreds of years of systematic exclusion, of policies being put in place, or structures being put in place to prevent... BAME people progressing” (Marcus).

This appears to suggest that Marcus believes that the context behind the introduction of positive actions measures is often not understood. A similar theme was also discussed within the EHRC (2019) report, within which it was found that “Employers are often unaware of or lack understanding as to why positive action is necessary in the first place” (p. 58). Further, this participant’s perception, along with Cara’s perception that many believe positive action is *“not fair on white people”* is linked to one of the key objections to positive action identified by Noon (2010) and discussed by Manfredi (2017), that positive action tries to remedy underrepresentation “by using reverse discrimination... but “two wrongs” do not make a right” (p. 6). Manfredi (2017) contests this objection by arguing in favour of a substantive model of equality, which “encompasses both the idea that equality should be seen as a means of breaking the cycle of disadvantage suffered by some groups” and the idea that “all groups in society should be given opportunities to participate in various aspects of civil life, including work” (p. 6). Manfredi’s (2017) approach to contesting this objection appears to support the view outlined by Marcus, in that the context behind the introduction of positive action measures – i.e. *“the hundreds of years of systematic exclusion”* or *“the cycle of disadvantage”* (Manfredi, 2017, p. 6) – needs to be understood for such measures to be supported.

5.3.2 Academic Researchers

Similar to participants who were EDI Practitioners, those that research equality were also able to provide an insight into the general level of understanding of positive action, as well as being able to suggest some reasons for this level of understanding. Alice discussed this:

“equality and discrimination law in general I would say isn’t well understood, beyond provisions about equal treatment and direct discrimination. Most people will equate discrimination with direct discrimination and with less favourable treatment because of a particular protected characteristic. They wouldn’t well understand

indirect discrimination either where people are actually treated the same and the impact is different for the different groups. Therefore, people would find it difficult to understand positive action because it appears to be contrary to that equal treatment rule which, there probably is widespread belief in that as a fundamental concept, the equal treatment rule, that everybody should be treated equally because of their particular protected characteristic or not treated unequally because of that. I would say the public in general don't fully understand the provisions of the Equality Act.” (Alice)

This provides a key insight into reasons why positive action is not well-understood or supported, by suggesting that equality law in general is not well understood when it extends beyond what Alice outlines as the “*equal treatment rule, that everybody should be treated equally... or not treated unequally*”, i.e. beyond a formal approach to equality (as outlined in Section 2.3, Chapter Two). This is again aligned with the objection identified by Noon (2010), that there is a perception that positive action uses reverse discrimination and thus underrepresented groups are being treated more favourably than others. Alice went on to consider the impact that this perception has on the use of positive action by employers and organisations:

“I am aware of a nervousness around using the positive action provisions... nervous about being challenged. That might however be an excuse, because they don't actually believe in it, because I would say there would be a large number of people who would equate it with positive discrimination which doesn't get much support, so it might well be that it's an excuse. It's a lot of hard work to make sure that you've got a robust system in place and that you are ready to tackle the complaints you might get” (Alice)

This further adds to the theme that there is confusion between positive action and positive discrimination and that this confusion leads employers to be reluctant to introduce positive action measures, either because they “*don't actually believe in it*” or because they are nervous that they might face legal

challenge. A similar theme was identified within the EHRC (2019) report, where it was found that employers are not confident in implementing positive action measures and that “this low confidence is based on fear of legal liability, which can arise from a conceptual confusion between positive action and positive discrimination” (p. 51).

Philip, an Academic Researcher, discussed why positive action may be negatively received within sport in particular:

“what positive action does is goes against many of the core assumptions of what sport’s about, which is whoever crosses the finishing line first is the best, the best person, the fastest person. The best sportsperson is the one who wins so... the idea of meritocracy is built into sport and is built into people’s assumptions about society too. Those people who are involved in sport use those ideas to make sense of how society works I think” (Philip)

This suggests that positive action will be received particularly negatively within sport, as it is perceived to go against meritocracy and *“the idea of meritocracy is built into sport”*. This links to the idea that sport has “specificity”, in that it has characteristics which set it apart from other areas of society and, in particular, principles of equality (Beloff, 2012), which is discussed further in Chapter Seven. Further, Philip states that positive action goes against *“many of the core assumptions of what sport’s about”* and Hylton (2010) argues that “Anti-racism must pose a level of resistance to sport’s pluralist ideologies of ‘level playing fields’ and ‘colour-blindness” (p. 341). This supports Philip’s view that there are *“core assumptions”* about the meritocracy of sport and that positive action (as a form of anti-racist policy) challenges these assumptions. Whilst there may be a perception that positive action goes against meritocracy within sport in particular, this was also identified by Noon (2010) as one of the key criticisms more generally too. However, Philip also discussed whether positive action does in fact challenge meritocracy:

“On the one hand positive action does conform to meritocratic ideas because ultimately, it’s the best person, the panel can choose who they want from that interview panel, but also it challenges meritocracy a lot because it plonks someone on that panel, regardless of a judgement being made about whether they are suitable or not. So that’s my concern with positive action... as a formal policy intervention, because it challenges many people’s views about what equality is” (Philip)

This discussion focuses on the EFL’s Recruitment Code as a specific form of positive action. Whilst the extent to which the EFL’s Recruitment Code takes into account whether candidates are “*suitable or not*” before they are selected for interview can be contested (and this will be discussed further in Chapter Seven), this does suggest that a key perceived concern with positive action is the extent to which it challenges meritocracy. Within the EHRC (2019) report, one of the reasons why employers were reluctant to use positive action measures was the fear of “discrediting merit” (p. 49), aligning with Philip’s perception.

5.3.3 Fans

The perception that there is a general lack of support for positive action amongst those that are less experienced in working with EDI appears to be demonstrated through the views of the fans that took part in the focus group. Several of the above participants discussed a perception that positive action is a form of reverse discrimination; for example, Cara, an EDI Practitioner, stated that there is a perception that positive action is “*not fair on white people*”. Fan participants within the focus group expressed similar views; for example, Lizzie stated:

“I think... if Black people should get an interview, then white people should, there should be a rule for white people” (Lizzie)

This appears to support the perception discussed throughout that within this research generally those outside of equality, diversity and inclusion spheres

are less likely to support positive action, aligning with Noon's (2010) identified objection that positive action is seen as reverse discrimination and that "two wrongs don't make a right" (Manfredi, 2017, p. 6). Further, stating that there should be an equivalent measure in place for white people may also support the notion that often there is a lack of "understanding as to why positive action is necessary in the first place" (EHRC, 2019, p. 58).

In addition to this, the reasons behind this lack of support for positive action may suggest that there is confusion between positive action and positive discrimination amongst the focus group participants, which appears to be demonstrated by Joe:

"I think it might just take a job away from someone else who potentially could earn it... I wouldn't support anything that sort of makes it mandatory to give a certain type of person an interview or accept an application because if they're not qualified, they're not qualified" (Joe)

A measure which makes it mandatory to give unqualified individuals an interview would likely fall outside the scope of positive action and instead be considered a form of positive discrimination. This suggests that whilst this participant stated that they do not support positive action, it may be positive discrimination that they do not support. This adds to the perception discussed throughout that positive action and positive discrimination are often conflated, in addition to that identified by participants within the YWT research (2018, p. 33) and the EHRC report (2019, p. 49), that there is "conceptual confusion" around positive action and positive discrimination. As this was the case amongst participants that do not research or work within EDI, this may support the idea identified by the YWT (2018), that those that have an awareness of positive action are generally EDI practitioners or HR specialists.

5.3.4. Coaches and Ex-Professional Players

The perception that positive action is often conflated with positive discrimination was also identified by two participants with coaching experience. David, an Elite Grassroots Coach, stated:

“that’s often the issue... it drifts into that much maligned positive discrimination which is not what we’re hoping to have” (David)

Further, Harry, an Ex-Professional Player and Coach, discussed how this is particularly the case within football:

“Things like positive action are rare in football. They are misrepresented in the media... Positive action should be for me about inclusion and embracing diversity but it is seen as a negative, by those who don’t really understand what it is” (Harry)

David and Harry’s views suggest that the perception that positive action is not widely understood or supported exists within football too, and this may be compounded by the fact that positive action initiatives are uncommon in football. Further, whilst the coaches and former players interviewed outwardly stated that they support positive action, some of these participants expressed reservations. One particular participant, Abdul, that had success as a player and currently works as a coach, stated that he supports positive action but had some concerns around such measures:

“I think positive action, it gives people the... opportunity and platform to say ‘look, this is what I can bring, this is who I am’ but at the same time... One thing that I’m always fearful of, not just in football but in any environment, is y’know someone thinking ‘we have a lack of women at our organisation, we’ll employ more women; we have a lack of Asian people in our organisation, we’ll employ more Asian people’. But these people don’t actually have the ability to do the job as much as someone else and then what will happen is, if there’s a lack of Black managers,

Asian coaches, Asian managers, they get the job for the wrong reasons. If they don't do well, that will just reinforce the stereotype" (Abdul)

This appears to suggest that a key concern for this participant is that positive action measures would disregard merit and encourage the appointment of unqualified individuals because of their characteristics. However, as outlined above, it can be argued that measures that disregard merit go beyond the scope of positive action and are instead more closely aligned with positive discrimination (Jarrett, 2011). Whilst this may be the case, the above discussion may demonstrate that there is confusion around the boundaries of positive action, as was found to be in the case in the YWT (2018) report and the EHRC (2019) roundtable discussion.

In addition to this, Abdul further raised concerns around reverse discrimination:

"for every positive action, there is also a victim of that action... I'm all for positive action but... I always have in my mind that one person will fall foul of that and I think you have to be conscious of that" (Abdul)

The concern that there is a "victim" of positive action and that "one person will fall foul" of such measures appears to align with Noon's (2010) identified objection that positive action is a form of reverse discrimination, and also appears to support Cara's view, outlined above, that there is a perception that positive action is "not fair on white people". It should be noted Abdul expressed these reservations despite the fact that he could potentially benefit from a positive action scheme. However, this may be explained through his own experiences in the game:

"In an ideal world [positive action] wouldn't exist. If I'm honest, I'm a firm believer in meritocracy... I'm someone of an Asian background but yet I've... had a great career, I've played for some fantastic clubs and I've found myself with opportunities, but I'd like to think that's because of my hard work and experience and success... you just want to be looked upon as another player, not with a label... it adds a difference to you

and makes you separate from the rest, and sometimes that's not a good thing" (Abdul)

Abdul's reference to being a believer in meritocracy may suggest some misunderstanding around positive action, which still requires a consideration of merit, and again may demonstrate the "conceptual confusion" that exists around positive action and positive discrimination (YWT, 2018, p. 33). Furthermore, Abdul's hesitancy around positive action may also be due to the fact as an 'insider' in the game, he has had opportunities because of his "*hard work and experience and success*" and not because of a positive action measure. This suggests that he believes that others can succeed without positive action too and that it is important to do so because positive action can make beneficiaries seem different, which is not always positive.

Concerns around positive action were also discussed by Craig, who referred to 'reverse racism':

"there can be a case if we're not careful of reverse racism, where... people would just see it as well they've got to do that and that's wrong"
(Craig)

As with Abdul, Craig also discussed his own experiences, which may again explain some of his nervousness around positive action:

"In one sense I believe if you're good enough you'll get the job, generally as a statement, and I'll be perfectly honest... in my life, I've not faced too much prejudice, you know, people just see me for who I am... there can be a case if we're not careful of reverse racism" (Craig)

The perceptions of the two participants above suggest a concern that their success may be attributed to positive action, rather than "*hard work, experience and success*". This aligns with a further of Noon's (2010) identified objections, discussed by Manfredi (2017), that "under-represented groups want to be appointed to a job because of their merits and not because of

positive action” (p. 3). As discussed above, whilst positive action does still require appointment on the basis of merit, the above discussion shows that there is a perception that it may not and that those who are more likely to be beneficiaries do not want to be perceived as being in a position due to tokenism, a perception which was also discussed by those likely to be beneficiaries in the YWT report (2018). Further, this shows a distinction between those that work in and research EDI, who were generally more confident in asserting that positive action complies with meritocracy and the differences between positive action and positive discrimination, than those that work outside of those spheres, in this case within football.

Andrew, who is currently the beneficiary of a positive action scheme in the form of a bursary, outlined his experiences of being ‘labelled’ as a result of such a positive action measure:

*“When I say to people I’ve got a bursary, they’re like ‘but why have you got a bursary, why I haven’t I got one?’ I say ‘listen, it’s nothing to do with me, [they] offered them out, I applied for one, I got one, that’s that’... Now OK we probably get labelled as BAME or whatever but do you know what I mean... My bursary has actually come in handy”
(Andrew)*

This appears to suggest that for Andrew, the benefits of being involved in a positive action scheme outweigh the negatives. It may also suggest that it is easier to see the benefits of a specific scheme, which has key aims and defined limits, rather than positive action in abstract terms.

Whilst concerns around meritocracy were greater for some participants that work within coaching compared to those that research or work within EDI, one issue discussed by those that research and work within EDI, and one of the coaches interviewed, was the extent to which positive action is used:

“I’m also aware and it also makes me nervous that actually sometimes I think positive action can be... it can be just something that people talk about, but don’t actually do” (Craig)

The notion that positive action is something that people or organisations “*don’t actually do*” was raised as a particular concern by those that research equality and, further, has been identified as a consistent theme within the literature. Davies and Robison (2016) state that organisations “prefer to steer clear of this opportunity to address disadvantage” (p. 83). In addition to this, the YWT report argues that positive action is an “underused tool” (2018, p. i) and the EHRC roundtable also discussed that positive action is “under used in apprenticeships, and generally in employment” (2019, p. 8), supporting Craig’s perception.

5.4 Conclusion

As this research explores whether the EFL’s Recruitment Code is a flawed form of positive action in its current form, it is important to firstly consider the perceptions of research participants on positive action more generally. In this research, all EDI Practitioners, Academic Researchers, and Coaches and Former Players expressed outward support for positive action. Conversely, all four of the Fan participants within the focus group stated that they do not support positive action at all. However, much of the reasoning given for this lack of support appears to relate more specifically to positive discrimination rather than positive action, as participants discussed being against measures which provide interviews to individuals that are not qualified, whereas positive action still requires a consideration of merit. This appears to support the perception discussed by many participants that have experience in EDI, that positive action is not widely supported, often because it is confused with positive discrimination. This also aligns with both the YWT research (2018, p. 33) and the EHRC (2019, p. 49) roundtable discussion, which found that there is “conceptual confusion” around positive action and positive discrimination. Further, fan participants appeared to express a view that positive action is

unfair on white people, aligning with both the discussion by many of the participants within this research and one of the objections identified by Noon (2010), that positive action is a form of reverse discrimination.

Whilst all coaching/playing participants expressed outward support for positive action, some of these participants outlined concerns with such measures. Two coaching participants discussed reverse discrimination, as well as being 'labelled' as a result of such measures, with one participant that had experienced success in the game discussing that this success was as a result of their hard work, rather than a positive action scheme. This is supported by the YWT (2018) research, within which participants that were more likely to be beneficiaries of positive action schemes discussed concerns around tokenism. Participants with EDI experience, however, were more confident in expressing their support for positive action and outlining reasons for this, aligning with the findings from the YWT (2018) research, where participants that had awareness of positive action were generally EDI practitioners and HR specialists.

As this thesis explores whether the EFL's Recruitment Code is an effective or flawed form of positive action, it is important to consider participants' views on positive action more generally in order to provide context to their views on the Recruitment Code. It further provides context to the views of Fan participants, who did not support positive action. Further, as the non-Fan participants all expressed outward support for positive action generally, this suggests that they would be likely to support a measure aimed at addressing racial inequality within professional football coaching. Accordingly, this may mean that criticism of the EFL's Recruitment Code relates to the Code itself and not because positive action measures generally are not supported. Considering perceptions of positive action allows the research to explore whether participants consider the Recruitment Code to be an effective or flawed form of positive action, which will be the focus of the following Chapter (Chapter Six).

Chapter Six

The EFL's Recruitment Code

6.1 Introduction

The previous Chapters within this thesis have considered the barriers to career progression that BAME managers and coaches face (Chapter Four), in addition to perceptions of the use of positive action generally as a means of addressing underrepresentation (Chapter Five). This Chapter explores stakeholder perceptions of the EFL's Recruitment Code. It considers the perceptions of the research participants on the way in which the Recruitment Code was drafted, how it is likely to be received, and the extent to which it is likely to be successful, considering both positive and negative perceptions of those from within and outside of the game. It should be noted that given the Recruitment Code's relatively recent introduction (outlined below), at present academic literature is limited. However, themes emerging from this research will be triangulated with the limited literature and publicly available data in this area where appropriate, to explore the extent to which the Recruitment Code can be considered an effective or flawed form of positive action to address racial disadvantage within professional football coaching.

6.2 Problems with the EFL's Recruitment Code

The full detail behind the EFL's Recruitment Code is outlined within Section 2.9 of Chapter Two. Participants within this research expressed a variety of perceptions on the EFL's Recruitment Code, both positive and negative. Amongst the negative perceptions, participants discussed a lack of communication around the introduction of the Recruitment Code, in addition to a perceived lack of monitoring and enforcement. Participants also expressed negative perceptions on the content of the Recruitment Code, in particular the apparent exceptions and the focus on academy positions. As a result of these negative perceptions, participants also discussed the potential failure of the Code and the implications this may have for future initiatives. Similar perceptions have been identified within the emerging literature. For example,

the SPTT (2016) questioned the extent to which the Recruitment Code is actually followed, monitored and enforced and a report by McGurk et al. (2019) discussed the “selective” improvements and “patchy implementation” of the Code (p. 3).

6.2.1 Lack of Communication

There was a general perception amongst participants within this research that there was a lack of communication and publicity surrounding the EFL’s Recruitment Code when it was introduced. Ashleigh, an EDI Practitioner in football, stated:

“I don’t know whether, maybe it’s just that they haven’t publicised it enough... so it kind of feels like this has been introduced out of, well, out of nowhere. What was the actual thought behind it? How long has this been in the making?” (Ashleigh)

This suggests a clear perception that there was a lack of communication around the introduction of the EFL’s Recruitment Code, with even those that work within EDI in the game perceiving it to have been introduced “out of nowhere”, questioning the thought behind it and how long it had been in development. Ade appeared to believe that the Recruitment Code was introduced in this way so that it would not attract attention:

“I think it is, it’s whispered about, it’s not shouted about... it came in and it was whispered about: ‘well we’ll put this, we’ll have this Voluntary Code’. It was almost like ‘don’t tell anyone, don’t tell anyone’” (Ade)

This description suggests a perception that the EFL wanted the Recruitment Code to not be widely known and to attract little publicity. This perceived lack of publicity around the Recruitment Code may be as a result of a nervousness that it would not be well received, as positive action generally is not widely supported or understood. However, Ashleigh argued that this lack of publicity of the Recruitment Code further compounded the issue, as it meant there had

been insufficient information provided on why the Recruitment Code was introduced, how it can help to address underrepresentation and its defined limits:

“I think there hasn’t really been enough talk about the actual benefits this can have, so I think there’s still a massive lack of education and that worries me, because people will feel like ‘oh this is just a thing that’s [going to] help one group of people’... a lot of people say that it’s racist towards another group and that will worry me because then actually it’s [going to], like, bring to the surface a lot of racist attitudes.” (Ashleigh)

The notion that stakeholders will be against such a measure if they do not understand why it is being introduced is supported by the literature on positive action more generally. Within the EHRC (2019) report, it was found that there was a lack of awareness and understanding as to why positive action is needed. Further, Manfredi (2017) argues that the context behind the introduction of positive action measures needs to be understood for such measures to be supported, in order to overcome Noon’s (2010) identified objection that positive action is a form of reverse discrimination but “‘two wrongs’ do not make a right’ (Manfredi, 2017, p. 6). This supports the view of the above participant, who argues that the lack of communication around the introduction of the EFL’s Recruitment Code and how this Code will help to address underrepresentation may lead to a lack of support for the Code and a resurfacing of racist attitudes due to a lack of understanding around its benefits and limits. Furthermore, the introduction of a positive action measure without those implementing the measure and other relevant stakeholders having a sound understanding of its benefits can also impact upon the proportionality of such a measure. A key requirement for both successful and lawful positive action is that the measure is considered proportionate. The EHRC (2015) outline several requirements for such measures to be proportionate, including “the balancing of competing relevant factors... the objective of the action taken... the seriousness of the relevant disadvantage” and a consideration of the specific needs of the target group in light of the impact of the measure on other protected groups (p. 168). As such, a lack of understanding of the

benefits of the measure and how it differs from something which is “*racist towards another group*” may bring into question the extent to which the Recruitment Code is proportionate if there is a lack of transparent communication in this regard.

Richard, an EDI Practitioner in football, argued that the Recruitment Code is being “*miscommunicated*” and outlined the impact that this can have:

“what’s not being communicated is they do have to be qualified, they do have to have and meet the same standard as every other applicant... they are encouraging you to interview somebody from the BAME community but they still need to meet all the other person specification criteria and qualifications, but people do not know... that’s a great way of demonstrating how it’s being, erm, at best miscommunicated”
(Richard)

Richard perceives there to be a lack of communication on the detail of the Recruitment Code and the way in which it operates in practice, namely that BAME managers and coaches have to reach a lower standard than their white counterparts. They suggest that the Recruitment Code is being “*miscommunicated*” because of a lack of awareness that such candidates still need to meet the requirements of the role and are not automatically shortlisted for or appointed to a position irrespective of merit. This is particularly important for a positive action measure, given that such measures are often confused with positive discrimination. As such, an actual or perceived lack of communication - or miscommunication - as to how the EFL’s Recruitment Code operates can further compound this confusion and result in a lack of support for the Recruitment Code.

6.2.2 Lack of Understanding

Linking to the above discussion on the impact of a lack of communication around the Recruitment Code, many participants within this research further discussed their perception that there is a general lack of understanding as to

what the EFL's Recruitment Code entails and how it operates. In particular, many participants felt that there is a perception that the Recruitment Code involves shortlisting or appointing a candidate irrespective of merit. This aligns with the findings from YWT (2018) research, on the "conceptual confusion between positive action and positive discrimination" that results in fear of legal liability and a lack of confidence in dealing with such measures (p. 30).

Ade, an Ex-Professional Player and Manager, stated:

"It's still a misnomer that... one in four candidates has to be Black... you have to appoint a Black manager. No, you don't, you have to interview, and I wish we could put that in neon lights flashing" (Ade)

Ade argues that there is still an incorrect perception that Clubs following the Recruitment Code are required to appoint a Black manager, suggesting a lack of understanding on the way in which the Recruitment Code operates. The perception that *"you have to appoint a Black manager"* is more closely aligned with positive discrimination and as outlined above, aligns with the findings from the YWT (2018) research that identified "considerable confusion between the two concepts" (p. 33). It further supports the findings from within this research on perception of positive action generally (Chapter Five).

In addition to this, the perception that there is a lack of understanding and, in turn, a lack of support for the Code is supported by the focus group data from within this research. Within the focus group, all participants stated that they were against the Recruitment Code; for example, as outlined in Chapter Five, Joe said that he would not support measures that made it mandatory to appoint or interview an unqualified candidate, suggesting a misunderstanding of both the Recruitment Code and the limits of positive action more generally. At the time at which the focus group took place, the EFL stated that the Recruitment Code required clubs to "include at least one suitably qualified BAME candidate (where an application has been received) on the interview shortlist for that position" (EFL, 2016) and not interview BAME applicants that are not qualified.

This thus suggests a lack of understanding of the way in which the Code operates.

Further to this, Marcus discussed a perceived lack of understanding of a similar rule adopted by the FA for national team positions, suggesting that this lack of understanding is not unique to the EFL's Recruitment Code:

“The majority of fans aren’t getting it. If you go by social media, and of course that’s a dangerous thing to do, going by the responses to things on social media because sometimes it’s the vocal minority... but, you know, just using the example of the FA adopting a Rooney Rule and the BBC putting that on their Twitter feed and the, you know, streams of tweets saying ‘this unfair, this is unfair, erm, positive discrimination, positive discrimination’ just underlines that football fans do not understand what this is” (Marcus)

The views expressed both by Joe on the EFL's Recruitment Code and by Marcus on the FA's Rule further demonstrate a lack of understanding of such measures and that there is a perception that many fans do not understand such measures. The conflation between measures that introduce an interview rule and still require a consideration of merit and a measure which mandates interviewing or appointing unqualified candidates further suggests that measures introduced within football will be subject to the “conceptual confusion” (YWT, 2018, p. 33) that has been found to exist in relation to general positive action measures.

6.2.3 Content of the Code – Permitted Exceptions

In addition to the negative perceptions of the lack of communication and resulting lack of understanding of the EFL's Recruitment Code, participants within this research also discussed the content of the Recruitment Code in negative terms. In particular, whilst many participants felt that the Recruitment Code is not widely understood, EDI Practitioner and Academic Researcher participants appeared to have a sound understanding of the Code themselves

and were critical of the way that it had been drafted. Participants particularly discussed the permitted exceptions included within the Recruitment Code, namely that it only applies in instances where clubs run a full recruitment process, i.e. shortlist candidates and interview more than one candidate, and that they are only expected to do so during the close season (EFL, 2016).

Ashleigh described these exceptions as a 'loophole':

"I think it's a big loophole... that can be used to certain clubs' advantages... There will be loopholes in any policy, but it needs to be as tight as possible. I don't think a lot of full recruitment processes are run" (Ashleigh)

This suggests that Ashleigh believes that many clubs will use the exception to their advantage, because it only applies in instances where clubs run a full recruitment process and full recruitment processes are not run very often. This was echoed by Chloe:

"I think that wherever you start to have exceptions, you start to allow clubs to use those exceptions as an excuse perhaps for not complying, for not doing what actually having these rules is intended to achieve" (Chloe)

Arguably, Clubs using the permitted exceptions to avoid following the Recruitment Code can be seen through the limited analysis that exists on the Code. During the pilot, the Code was not followed on five occasions (Slater, 2017). Birmingham City – one of the ten clubs to sign up to the Voluntary Code – twice failed to interview a BAME candidate, however they stated that they had ““abided by the agreement”” as the Code allowed them to appoint ““specific individuals” without a full recruitment process during the season” (Slater, 2017, para. 5). This may support the participants' perceptions that the exceptions may be a loophole because full recruitment processes are not often run. Further, following the pilot, the EFL's adoption of the Code stated that it “is mandatory when Clubs consider multiple applicants for a role” (EFL, 2019)

thus arguably meaning that the full recruitment process exception is still in place. From a CRT perspective, these loopholes could mean that the EFL's Recruitment Code is an example of a "non-performative" action (Hylton, 2010, p. 345). Hylton (2010) argues that when anti-racism promises are acted upon, they can be considered a "performative action", but where there are insufficient conditions for the measures to actually be performed rather than just spoken about, "they can be viewed as non-performative" (p. 345). Ashleigh and Chloe's concerns around these exceptions may demonstrate that there are insufficient conditions for the Recruitment Code to be adequately acted upon in order to be considered performative actions. As non-performative promises can actually perpetuate inequalities, these exceptions may present significant challenges to the extent to which the EFL's Recruitment Code can be considered an effective form of positive action.

6.2.4 Lack of Monitoring and Enforcement

In addition to the above negative perceptions in relation to the permitted exceptions to the EFL's Recruitment Code, many participants within this research were also critical of the fact that, at the time at which the interviews took place, the Recruitment Code was only voluntary for first-team positions and there was a perceived lack of enforcement at first-team level. Alice, an Academic Researcher in law, questioned why it was only voluntary at this level:

"you could argue... if it's fine to make it mandatory at academy level, what makes the first-team situation so different, so unique, so varied?"
(Alice)

This suggests that Alice believes that if the Recruitment Code can be mandatory at academy level, it should also be mandatory at first-team level. In addition to this, participants felt that this voluntary nature makes the Code less likely to be successful. Harry stated:

"This [Code] has been drafted poorly, it cannot succeed if it is voluntary"
(Harry)

This was echoed by Chloe, who stated:

“relying on people to do things on a voluntary basis in my view doesn’t work” (Chloe).

The above two views suggest an emerging perception amongst these participants that the Code will not succeed because it is voluntary, and if it is voluntary, clubs will not comply. Philip argued that the voluntary nature of the Code sends a message to clubs that they do not actually need to follow it:

“what sends alarm bells to me when I see this type of thing: number one is the word ‘voluntary’ is a problem, and, er, ‘expected to’ is a problem too because that’s classic policy language that basically says you don’t have to do it” (Philip)

This outlines a criticism of the Recruitment Code for first-team football, in that it is voluntary and therefore there is a lack of enforcement of adherence to the Code. A similar perception was outlined within the SPTT report, which stated that the Code is “arguably undermined in its capacity to [achieve results] by a series of caveats in its wording, which position it as an ‘optional’ rather than ‘must do’ consideration forcing mechanism” (SPTT, 2017). This aligns with the views from Philip above, which state that the terms ‘voluntary’ and ‘expected to’ are “*classic policy language that basically says you don’t have to do it*” (Philip). The above participants felt that this would make the Code less likely to be followed and this may be seen by the statistics emerging from the pilot, where the Recruitment Code was not followed five out of a possible eight times (Slater, 2017). Arguably this would not have been able to happen had the Code been mandatory, as seen with the Rooney Rule in the NFL, whereby the Rule was only breached once since its inception in 2003, which was met with strict penalties (Duru, 2008). Further, the voluntary nature of the EFL’s Recruitment Code aligns with the permissive nature of positive action within the legal framework, with Sections 158 and 159 of the Equality Act 2010 permitting organisations to introduce positive action measures but not mandating them to

do so. As such, similar to the views of the above participants, the EHRC (2019) research into positive action generally found that some participants felt that positive action measures should be mandatory in order to resolve “under-representation and disadvantage” (p. 54). In addition to this, Braithwaite (2008) argues that an important feature of successful reflexive regulation is that it is supported by a gradual escalation of sanctions until compliance is reached. As positive action is considered an example of reflexive regulation (discussed further in Chapter Seven), the lack of enforcement of the EFL’s Recruitment Code may limit its likelihood of success, supporting the views of the above participants that believe the Recruitment Code would not be successful for first-team football because it was voluntary. It should further be noted that following the pilot (and after these interviews took place), the EFL removed the voluntary aspect of the Recruitment Code for first-team football in instances where clubs run a full recruitment process.

In addition to concerns around the voluntary nature of the Recruitment Code, some participants within this research discussed the apparent lack of monitoring of adherence to the Recruitment Code:

“Personally, I didn’t think [the Recruitment Code] would work as there was no monitoring of clubs when they did make changes to their staff” (Harry).

The above outlines a perception that emerged throughout this research that the Recruitment Code is not well monitored by the EFL and because of this, clubs will be less likely to comply. This is linked to the perception that the apparent lack of transparent monitoring makes it harder to evaluate whether clubs are complying, which was discussed by Cara, who works as an EDI Practitioner in football:

“my question is: what is happening within the EFL now? Are they going to evaluate the practice now with all 72 clubs? Because unless you’re doing that and unless you have the data that backs that up, then we’re all a bit anecdotal stuff. Do I know Gillingham are doing it? No, I don’t.

If a manager goes, do I know if there's a process or not? Maybe the EFL does and that's great if they do [but] if they do, it would be good if they shared that with everybody else" (Cara)

This appears to suggest that, for the Recruitment Code to be successful, there needs to be an open and transparent monitoring and evaluation process. A similar view was discussed within the SPTT report, which stated that “the apparent lack of any comprehensive mechanism for recording or reporting on progress is also likely to limit the potential of the EFL to fully assess the impacts and effectiveness of this important positive action intervention” (SPTT, 2017, p. 10). The SPTT also commented on the monitoring of the Mandatory Code at academy level, stating “we understand there is no consistent monitoring of the scheme” (SPTT, 2017, p. 4). Further, a report by McGurk et al. (2019) states that “the Code is not transparently monitored” (p. 3). Since the completion of the interviews within this research, the results of the pilot have been publicised (Slater, 2017), which suggests that there may have been some monitoring in place. However, as participants working within senior positions in EDI in football were seemingly unaware of this, this suggests that there was limited transparency on this process. Further, the idea that a lack of monitoring and evaluation would have a negative impact on this positive action scheme aligns with the finding from the EHRC (2019) report, which states that “The lack of robust evaluation of positive action measures in practice... was felt to contribute to [the] lack of understanding and awareness” (p. 52) and a key implication of the YWT (2018) research was that “robust evaluation of efficacy should be encouraged” (p. 82). This appears to support the above participant’s perception that for the Code to be better understood, there should be a transparent evaluation process that is “*shared... with everybody else*”. This is particularly important due to the permissive nature of positive action generally and the voluntary nature of the Recruitment Code for first-team positions, as transparent monitoring can further encourage organisations to act (see Chapter Seven for discussion on savings clauses and proportionality).

Whilst many participants within this research pointed to others, such as fans, being critical of the Recruitment Code because of what they believe to be

misconceptions around meritocracy, many interview participants themselves felt that the Code should go further than its current limits. In particular, in light of the above discussion, many believed that it needs greater monitoring and enforcement. Harry discussed the impact of the pilot on this:

“I have real concerns that this code will ever be implemented correctly. The last season’s efforts highlight the fact that the voluntary aspect doesn’t work and must be mandatory” (Harry)

Marcus also felt that the Code could not succeed in its current format and instead should be mandatory:

“I don’t see it set up in [a] way to allow it to succeed, erm, at the moment, erm, and I hope I’m wrong, but I think it needs to be mandatory, I do think it needs to be mandatory to succeed” (Marcus)

The above two views outline a perception that the Recruitment Code will not succeed whilst it is voluntary and that for it to be successful, the Code needs to be mandatory. This was also one of the key findings within the SPTT report, which stated that “until the code becomes a ‘must do’ there is likely to be little change in the overall picture among EFL clubs” (SPTT, 2017, p. 4). Chloe echoed this view and also offered an explanation as to why this may be the case:

“voluntary is fine up to a point but at some point you have got to not use a carrot you have to use a stick, because if there is no sanction attached or there is nothing that is, that provides a punitive element to not doing this, then you kind of think well unless you can see the moral value, the kind of intrinsic ‘this is the right thing to do’ argument, then what is the motivation to do it?” (Chloe).

This suggests that Chloe believes that the only way in which a measure without sanctions will be successful is if its moral value is understood. This would lead

clubs to follow it because it is the right thing to do. This was also discussed by Ade:

“[It is] still very much the heart and minds thing. You can impose a rule all day long, but if people don’t buy it, they’ll find ways around it, and actually, once they find ways around it, they’ll carry on finding ways around it and people will never buy into it” (Ade)

Chloe and Ade appear to believe that the Recruitment Code needs buy in and understanding in order to succeed. This may explain why the Recruitment Code was arguably unsuccessful in its voluntary form during the pilot. As discussed in the sections above, the lack of publication around the consultation process and its introduction mean that the Code is perceived to be poorly understood. Whilst the EFL’s Code may have issues regarding lack of understanding due to its consultation process, a similar finding was also made within the EHRC (2019) report on positive action generally, which stated that “there was a perceived lack of buy-in and understanding... as to the rationale and benefits of using positive action” (p. 52), aligning with Ade’s view that it is a “*hearts and minds thing*” and that if people do not buy into the Recruitment Code, they will find ways to avoid following it, showing the importance of buy-in for the success of positive action measures.

6.2.5 Impact of Failure

As seen within the above discussion, many participants were critical of the Recruitment Code, the way in which it was drafted, its voluntary nature and how it is being monitored and enforced. As such, many perceived that the Recruitment Code would not be successful in achieving its aims of increasing the representation of BAME managers and coaches and were concerned about the impact of this failure on the introduction of future measures aimed at addressing the underrepresentation of BAME managers and coaches.

Ade discussed his apparent scepticism of the potential success of the Recruitment Code, because of the initiatives that have preceded it:

“for us this is just the latest in a long line of initiatives, discussions about what we do, and we’ve got a little bit of that er world-weariness about it, where if you’re coming in new to it you might go ‘oh this is great, this is fine, let’s just see how it goes but keep it nice and softly-softly’, we’re going ‘we’ve been here for a while mate’” (Ade)

Ade’s description of the EFL’s Recruitment Code as *“the latest in a long line of initiatives”* suggests that he perceives this Code to be no different to initiatives that have gone before with limited success. This appears to add to the *“world-weariness”* that Ade feels, suggesting that he is doubtful as to whether the EFL’s Recruitment Code will have any impact.

Linking to the *“world-weariness”* that Ade feels, Craig described a similar perception:

“I think there’ll be a lot of instances where that’s not followed, and I think, erm, they’ll find ways ‘round it, but I just don’t see that in terms of the professional game that it’ll change. I think... we are stuck with what we’re stuck with in the professional game, you know you don’t see female managers, you don’t see Black managers in the British game, you know... I honestly don’t see this changing very very quickly.” (Craig)

Craig appears to believe that the Recruitment Code will not be successful because there will be many occasions where it is not followed. This links back to the above discussion on the lack of monitoring and enforcement surrounding the measure. It further suggests a perception that the EFL’s Recruitment Code will not be able to achieve change to overcome issues that they perceive to be embedded within professional football, but also that Craig does not believe that any initiative will have much success because *“we are stuck with what we’re stuck with”* and thus he does not see things changing quickly.

Furthermore, because there had been calls for the introduction of an interview rule for some time, Ashleigh discussed the impact that a perceived failure of the EFL's Recruitment Code may have:

"I'm quite like... untrustworthy of football and my main concern is that... it will run for maybe a couple of years, it will be evaluated... it will be seen as not working, then what's gonna be the alternative? Er it might take another five years to come up with an alternative, erm, regulation or... some kind of other way of looking at it. Or... basically the baby will get thrown out with the bath water and we won't look at it again, we'll say 'we've done our bit, er, it didn't work so we're just gonna have to let it happen organically'. And that's what really worries me... I don't trust football, to get it right, and then I worry that when it doesn't go right... that we'll be back at square one or we'll be ten steps behind where we were before this was introduced." (Ashleigh)

Ashleigh's view summarises a key emerging perception from this research. As outlined above, the introduction of an interview rule following the apparent success of the Rooney Rule in the NFL had been heralded as the solution to the problems faced by BAME managers and coaches for some time. As the EFL's Recruitment Code is perceived to be EFL's adoption of such a rule, there was an emerging concern that if the Code is "*seen as not working, then what's... the alternative?*". Because of this, Ashleigh suggests that should the EFL's Recruitment Code not be successful, it will be difficult to imagine what further initiatives will be put in place, believing that football authorities will say that change should happen organically, rather than introducing positive action initiatives, because the one thing that was expected to work has not. This is why it is so important that even though Recruitment Code is still in its very early stages (and the interviews took place during the pilot stage), the Code is implemented with a clear scope and framework, with a robust and transparent evaluation process. A similar theme was identified within the EHRC (2019) research, where it was found that a "lack of obvious impact arguably perpetuates reticence to use [positive action], as employers are not willing to commit resources to measures that appear to offer little gain" (p. 51),

supporting the views expressed by Ashleigh that a lack of success may lead to an unwillingness to continue to introduce positive action measures. Further, in the recent case of **Furlong**, in which it was found that the positive action measure in question was not lawful, the Tribunal recognised that their decision may have a “knock on effect of discontentment and disillusionment” (para. 134). This further illustrates that unsuccessful positive action measures may deter decision makers from introducing further initiatives aimed at addressing underrepresentation and, in this instance, may also deter clubs from following the measures. This also aligns with the discussion in Section 6.2.3 above, that “non-performatives” can actually perpetuate inequality if there are insufficient conditions to ensure that they are effectively implemented (Hylton, 2010, p. 345).

6.2.6 Impact on BAME Managers and Coaches

In addition to the discussion on the impact of the potential failure of the Recruitment Code, some participants were also concerned about the impact of the Code on the way in which BAME managers and coaches are viewed. In particular, some participants expressed concern that a BAME manager who receives a guaranteed interview and is then appointed to a position may be viewed as not being there on merit.

Alex, an Academic Researcher, stated:

“I think that... if [a] coach was shortlisted because they were a Rooney Rule candidate then onlookers could suggest that they might not be good enough for the job because they are just the Rooney Rule candidate and they’ve been employed because there’s an imbalance trying to be addressed... if I was a Black coach and I was shortlisted, I think I would like to know if I was shortlisted on merit or because I needed to be one of the tick boxes” (Alex)

Alex suggests that if he was a Black coach, he would like to know whether he was shortlisted on merit or to follow the Recruitment Code. He further outlines

a key concern associated with measures like the Recruitment Code, in that BAME managers and coaches appointed to positions may be viewed as not actually good enough for the role and only in position because of the Code.

Philip, a further Academic Researcher participant, discussed the impact of perceived tokenism:

“if you’re the coach appointed through the Rooney Rule, that’s going to put a hell of a lot of pressure on you, to try and shake the tokenism badge, you never deserved the job in the first place, he only got it because he was Black. You have a lot of pressure on you then to succeed” (Philip)

The notion of not wanting to be “one of the tick boxes” and trying to overcome issues with being seen as a ‘token’ appointment has been identified within existing research into positive action initiatives. Within the YWT (2018) report, considering the use of positive action to increase the representation of women in apprenticeships, participants “who were more likely to be beneficiaries of relevant positive initiatives” outlined “that they would not wish to be viewed as the ‘token’ female” (p. 38). This concern was also identified within the EHRC (2019) report, where “some participants expressed the view that applicants may feel like they are being targeted as a ‘token’ to enable the employer to increase representation of a particular group” (p. 53). Further, this was also discussed by Noon (2010), who identified a key objection to positive action schemes, that they “can leave those who have been selected with the feeling that they have not been chosen for the right reasons... and that they are a token rather than a valued employee” (p. 735). In addition to this, CRT academics Delgado and Stefancic (2001) argue that when measures call for some form of concession, like positive action, “the costs of that concession are always placed on minorities-in the form of stigma-or on working class whites” (p. 31). The stigma that they refer to aligns with the tokenism discussed by Alex and Philip. This discussion from the literature appears to align with a key concern from within this research, that BAME managers and coaches may feel like they are a ‘token’ and may be viewed as such by ‘onlookers’, Philip outlined

the further implications that this might have, with the significant amount of pressure it puts on BAME candidates to “*shake the tokenism badge*”.

6.3 Positives of the EFL’s Recruitment Code

Whilst many participants were negative about aspects of the EFL’s Recruitment Code, many participants, including some of the same participants that expressed negative views, did have something positive to say about the EFL’s Recruitment Code and, particularly, the EFL for taking an important first step, considering the Recruitment Code to be a stepping stone to further action. Some participants also speculated that despite the above criticism, the Recruitment Code may have the potential to be successful, particularly at academy level.

6.3.1 Proactive Step

As outlined above, despite the negative perceptions that many participants expressed on the content of the Recruitment Code, many participants within this research praised the EFL for taking action. In particular, participants who work as EDI Practitioners or Academic Researchers and who expressed strongly positive views in favour of positive action generally (discussed further in Chapter Five) were particularly complimentary of the EFL for the introduction of the Recruitment Code.

Despite raising key concerns around the impact of failure of the Recruitment Code, outlined in Section 6.2.5 above, Ashleigh appeared to commend the EFL for introducing the measure:

“I think it’s interesting that they’ve done it. I think it’s quite radical in a way because it’s an issue that’s been spoken about a lot. So what will tend to happen is maybe a Black manager will be appointed and this debate comes around why there are so few Black managers... and it will disappear for a while and then three months’ time it will resurface

again, erm, but this is actually something that's been brought in, so, finally people are not just talking about it, they're actually acting on it."
(Ashleigh)

The above summarises the emerging perception from this research, that there is a sense that the EFL should be praised because they have taken a positive, proactive step. There has been talk for a number of years around measures that should be introduced to increase the representation of BAME managers and coaches but despite some softer positive action initiatives concerning mentoring and bursaries, there had been little in the way of measures aimed at increasing employment opportunities. As such, Ashleigh believes that the introduction of the EFL's Code is "*quite radical*" and whilst she does not explicitly elaborate on whether they consider "*radical*" to be positive or negative, it appears that she considers this to be positive because "*finally people are not just talking about it, they're actually acting on it*". A similar perception was also outlined within the SPTT (2017) report, within which the EFL Code was described as a "significant [step] on the journey to recognising that something meaningful needs to be done" (p. 4). Further, when considering the EFL's Recruitment Code as a form of positive action, existing research suggests that there is "limited engagement by employers with positive action" (Davies & Robison, 2016, p. 85), with fewer examples of positive action measures in relation to race than gender (EHRC, 2019, p. 8). As such, the EFL's action in this regard could be considered "*quite radical*", as perceived by Ashleigh.

In addition to this, Chloe expressed similar views on the introduction of the Recruitment Code:

"I think the positive action is quite a bold move. It shouldn't be, it shouldn't be seen as a bold move, but it is, because it doesn't happen that often" (Chloe)

Chloe appears to praise the EFL for introducing the Recruitment Code because she perceives the introduction of a positive action measure to be a “*bold move*”, which does not happen very often. Similarly, Philip said:

“I’m frankly amazed this has got to where it has, in a positive way... For the Football League to adopt something like this for me is pretty extraordinary” (Philip)

Chloe’s description of the EFL’s initiative as “*a bold move*” and Philip’s as “*pretty extraordinary*” suggest that the EFL have taken a significant step in introducing the Recruitment Code, which these participants see as praiseworthy. This appears to be due to the perception that positive action initiatives are, at present, limited (Davies & Robison, 2016), particularly in relation to race (EHRC, 2019).

Furthermore, Alice appeared to praise the EFL for the introduction of the Recruitment Code because they have taken “*active steps*”:

“I mean it’s a very positive initiative on the part of EFL that they don’t need to do, that they have recognised a problem and they’re actually taking active steps to address that problem” (Alice)

This appears to align with the view expressed by Ashleigh, outlined above, that the EFL should be commended for introducing the Code, because it moves beyond discussing the problem to actually introducing a measure aimed at addressing underrepresentation. This was a view expressed by ten participants within this research; for example, Marcus stated:

“in terms of the EFL... getting this agreed by the clubs I think was a very, very positive move that number one acknowledged there was a problem and number two set about to address it in some way” (Marcus)

This summarises a key emerging perception from this research, that despite criticism of the content of the Recruitment Code and the way in which it is

enforced, the EFL should be commended for moving beyond discussion and actually introducing a positive action initiative. Participants felt that this acknowledged that there is a problem with the representation of BAME managers and coaches and that the EFL have taken a proactive step to address this by introducing the Code. It should further be noted that the above participants that were positive about the introduction of the Recruitment Code were also strongly in favour of positive action more generally, which may explain why they were in favour of the introduction of a positive action measure. Further, such participants also work as EDI Practitioners or Academic Researchers and may therefore have a greater understanding of the current “limited engagement by employers with positive action” (Davies & Robison, 2016, p. 85), which may result in a greater appreciation for the EFL’s “*bold*” step in introducing such a measure. However, it should be noted that whilst many participants in this research praised the EFL for taking action, Hylton (2010) argues that “CRT can explain the emergence of some anti-racism initiatives through the concept of interest convergence” (p. 345). This concept, popularised by Derrick Bell (1992), contends that positive action initiatives (amongst other anti-oppression successes) “tend to be as a result of the convergence of interests for both those in power *and* those who have been subjugated” (Hylton, 2010, p. 345). This would suggest that the EFL’s Recruitment Code was only implemented because the EFL’s interests - such as sponsorship and the need to be seen to be inclusive (Hylton, 2010) - and those of BAME managers and coaches converged.

Some participants felt that any problems or criticism of the Recruitment Code could be overlooked because it can be viewed as a stepping stone for further action. Ade, an Ex-Professional Player and Manager, explained:

“It’s imperfect, because it’s always going to be. I think the important thing is that we had to do something, we had to start somewhere” (Ade)

This appears to suggest that Ade is willing to excuse or overlook any of the issues with the Recruitment Code because they recognise that the EFL “*had to start somewhere*”. This could be as a result of his experience of working as

a professional manager and Ade did go on to provide further detail in this regard:

“no one’s ever sat down and said: ‘what does positive action look like?’ This issue of the number of BME managers, even from when I was finishing my career in the early noughties, it’s been around for 15 years now and beyond. We’ve never really put anything in practice until the Voluntary Code. That’s why I accepted it wasn’t perfect, but I could also accept it was a start because we haven’t had anything before then; a lot of warm words, a lot of this and that, but nothing in place” (Ade)

Ade’s discussion outlines a perception that because there has not been rules like this within English football previously, he is willing to accept that the EFL’s Code is not perfect. The perception of the EFL’s Code as a “a start” appears to align with the view of the SPTT (2017), who described the academy and first-team Codes as “significant steps” (p. 4). Further, the report by McGurk et al. (2019) states that “it might be argued that the [Recruitment Code] represents a bold step forward by the EFL... in the context of the extreme paucity of positive action initiatives taken in other high-profile industries” (p. 14). This again aligns with the theme emerging in this research, that the EFL should be commended and problems with the Recruitment Code overlooked because of the limited measures that have gone before.

6.3.2 Potential Success

Despite the criticism on the content of the Recruitment Code and the way in which it operates, 17 participants from within the interviews and focus group speculated on its potential for success. Ashleigh stated:

“I think even if they increase it by a bit, it’s still going to be a success because nothing else is being done” (Ashleigh)

This outlines a perception that any increase in the representation of BAME managers and coaches can be viewed as a success for the EFL’s Code

because Ashleigh feels that there is nothing else being done to address underrepresentation. This aligns with the CRT view that positive action can achieve “meaningful, if modest” success (Crenshaw, Gotanda, Peller and Thomas, 1995, p. xxx). It is also aligned with Ashleigh’s views in Section 6.3.1 above, that the EFL should be commended for taking action and not just discussing the problem and suggests that Ashleigh perceives that the EFL’s Code should not be judged too harshly because the EFL have taken this proactive step.

Furthermore, given the similarities between the EFL’s Code and the Rooney Rule, some participants drew on the success of the Rule in the NFL to discuss the potential for success in the EFL:

“it comes from the Rooney Rule doesn’t it, and the Rooney Rule, there is enough evidence to suggest that it’s had a positive influence on the NFL, so you can say at least it’s evidence based, this approach, and it has seemed to produce the outcomes that it wanted to, which is to increase the number of BAME head coaches in the NFL” (Philip)

This suggests that Philip believes the Rooney Rule has worked well in the NFL and, as such, the EFL’s Code can be successful too. There is evidence to suggest that the Rooney Rule has had success: prior to its introduction, 70% of NFL players but only 3 of 23 head coaches were minority ethnic (Cashmore & Cleland, 2011) but by 2015, 17 of 87 vacancies (20%) had been filled by minority ethnic candidates (Fox, 2015), with minority ethnic candidates now 19-21% more likely to fill an NFL head coach vacancy than prior to the Rule’s introduction (DuBois, 2015). This may suggest that the EFL’s Code has the potential to be successful; however, it is important to note key differences between the Code and the Rooney Rule, in that in addition to the general differences between football in the English leagues and American football, the Rooney Rule also invokes sanctions for non-compliance and falls within the United States’ affirmative action law, which has a differing historical and legal context to the British positive action framework. Further, notably there has only been one breach of the Rooney Rule since its introduction in 2003 (Duru,

2008), whereas the EFL's Code for first-team football is voluntary and was not followed five out of a possible eight times during the pilot alone (Slater, 2017) suggesting that it may not achieve the same level of success as the Rooney Rule.

Further participants discussed the potential for success of this Recruitment Code at academy level, where the Code is mandatory. Marcus stated:

"I think that the EFL's rule at academy level, erm, although the figures aren't made public, have already proved to be successful in some way"
(Marcus)

Since the completion of this interview, some data has been released on the success of the Recruitment Code at academy level. Data from 76 of 123 jobs advertised on the EFL website showed that there were "nearly 1,500 applications, including 170 from BAME candidates" and that "just under one in five of all applications led to an interview but slightly more than half of qualified BAME applicants were interviewed" with 11 of 76 jobs going to BAME candidates (Slater, 2017, paras. 14-15). Slater (2017) described this data as "slightly more encouraging" than at first-team level (para. 12). Furthermore, the SPTT (2017) report found that the Mandatory Code "is likely to yield some positive incremental outcomes in increasing the diversity of the coaching workforce at the youth academies of member clubs over time" (SPTT, 2017, p. 9). Alongside this, Conricode and Bradbury (2020) analysed the effectiveness of the Recruitment Code at academy level. They found that the Code "had engendered a strongly positive impact in enabling an increased number of appointments of BAME coaches at club academies" (Conricode & Bradbury, 2020, p. 220). They further found that 97% of all BAME applicants at academy level during the 2016-17 season were shortlisted for interview, and BAME coaches accounted for 49% of all new coaching appointments at academy level (Conricode & Bradbury, 2020). This supports Marcus' view that the academy Recruitment Code has the potential to be successful at this level.

The success of the Code at academy level may also be supported by the information provided by one participant within this research that works for a professional club:

“We’ve completely embedded [the Code] into our academy, so all academy roles with regards to part time, full time, whatever it might be, are following this Code” (Michelle)

Michelle perceives that the Recruitment Code has been fully embedded into her club’s academy. Whilst being fully embedded does not necessarily mean that it will be a success, this appears to support the perception that the Code is more likely to be followed at academy level and, arguably, it has a greater likelihood of success if it is being followed in every instance.

Eight participants discussed the potential impact of the Code being successful at that level. For example, Ashleigh said:

“if we can get some more representation as a result of this it will be good. I think especially at academy level, because that can lead to long-term progression for managers” (Ashleigh)

This suggests that success at academy level may lead to success for the representation of BAME managers and coaches generally due to the associated *“long-term progression”* of coaches. Linking to this, the EHRC (2019) research found that “the isolated use of positive action is ineffective and that a ‘life cycle’ approach is absolutely vital” (p. 44). This supports the perception that the implementation of the EFL’s Recruitment Code at academy level is a key positive because it adds to the *“long-term progression”* or ‘life cycle’ approach (EHRC, 2019, p. 44), which is likely to have more success than the introduction of a measure for first-team football alone.

Cara discussed this further:

“I think it has more impact at the academy level than it would have, you know, at first-team manager level. I think a lot of the clubs you know have it fairly in mind who they're looking for to manage the first-team, but until we improve the flow and experience of people coming up through the academies, you know from being a good community grassroots coach, into being a good academy coach, into becoming director of the academy, into that pipeline, I think then this is a good first start to do that” (Cara)

This indicates that Cara believes that the Recruitment Code has more chance of success at academy level than first-team level. The discussion of the potential for progression from grassroots coaching to academy coaching and ultimately an academy director suggests that Cara believes that success of the Code at academy level may lead to further representation of BAME managers and coaches at first-team level. However, Cara discussed needing to improve progression within the pipeline which suggests that a holistic approach is needed before the success of the Code at academy level will impact representation at other levels.

In addition to speculating on the potential success of the EFL's Recruitment Code, some participants also discussed the specific ways in which the Recruitment Code can help to increase the representation of BAME managers and coaches. Ian outlined his views in this regard:

“I think it's a good idea because it will at least get, if there is a prejudice there then it will get more people from a BAME background the opportunity for an interview and if in their interview they can demonstrate that they are a better candidate than another person, then it may help” (Ian)

This outlines how the Recruitment Code can have an impact. If prejudice is stopping BAME candidates from being interviewed, then a guaranteed

interview for one BAME candidate will give them the opportunity to demonstrate their knowledge, skills and expertise. Further participants within this research expanded upon the impact that the interview rule can have, even if the BAME candidate interviewed is not successful:

“if it’s me and I interview for a job but I don’t get it but I impress them, that might be discussed and when another job comes up they might say ‘ah you know what, we had so and so interview for this job and he was really impressive, you know, take a look at him’” (Abdul)

This suggests that an interview rule is a good way to break down barriers and assist BAME managers and coaches with breaking into pre-established networks. Ade discussed this in similar terms:

“even if you don’t get that job, managers talk, chairmen talk, players talk. Say I’m now a chairman or a manager and you come to me or you’ve interviewed for me as a BAME [coach], I think ‘well maybe not for me but I tell you what, I was really impressed with him or her, I’ll keep a mental note of that’. A day or two later on the phone to one of your colleagues in a lower division who’s just lost their manager: ‘oh by the way, I tell you who came to an interview with me, they came and... so on, really good, honestly go and interview them, you’ll be really impressed with them’ so that’s how that dialogue happens” (Ade)

This again outlines a clear perception on the way in which an interview rule can have a positive impact, as it enables BAME candidates to speak to decision makers, giving them the opportunity to impress, which can in turn enable them to break into the networks from which managers and coaches are recruited. This aligns with the literature on the way in which the Rooney Rule works in the NFL. Duru (2008) argues that a “face-to-face, in person, interview with an [organisation’s] primary [decision makers] begets meaningful consideration” as sitting down together and discussing a common interest “potentially melts away conscious or subconscious preconceptions and stereotypes that might otherwise color [sic] decision makers’ judgements” (p.

195). This appears to support the emerging perception from this research that providing BAME managers and coaches with an interview enables them to make connections with key decision makers in the game and breaks down prejudice and stereotypes. Furthermore, the fact that the Recruitment Code was rolled out further and expanded to all teams may be an indication that it did have some success during this period.

6.4 Conclusion

Participants within this research expressed a variety of perceptions on the EFL's Recruitment Code, both positive and negative. Many participants commended the EFL on taking the positive step to introduce this Recruitment Code, as there was a perception that previously there had been much discussion but little action. Many participants within this research perceived the Recruitment Code to be a stepping stone to further action and, as such, felt that they could overlook problems with the Code because it can be seen as a start. Finally, several participants pointed to the success of the Rooney Rule in the NFL to suggest that the Code has potential to be successful in the EFL too, with many outlining the opportunities it provides to break into pre-established networks in similar ways to literature on the Rooney Rule, namely that sitting down together and discussing a common interest may help to overcome conscious or unconscious bias and stereotypes that may influence a decision maker's judgement (Duru, 2008) and that even if the BAME candidate is not successful in one interview, the decision maker will remember them for future positions.

Despite this, participants were critical of the lack of communication around the Recruitment Code, stating that they felt it had been introduced with little publicity or communication. Some participants felt that the soft approach to introducing the Recruitment Code meant that there was a lack of understanding of how the Code could increase the representation of BAME managers and coaches and, particularly, its scope and defined limits. In particular, many participants were concerned that the Recruitment Code is likely to be confused with measures which are more closely aligned with

positive discrimination, which one participant feared could lead to a rise in racist attitudes towards BAME managers and coaches. This also led to concerns that the introduction of the Recruitment Code would lead BAME managers and coaches to feel that they are in position as a token, resulting in pressure to try and overcome this perception. This is something that has been identified within existing research into positive action, such as the YWT (2018) and EHRC reports (2019), as well as research by Noon (2010). It has also been discussed in a CRT context, which argues that positive action places a burden on minorities through the stigma it creates (Delgado and Stefancic, 2001). Further, participants were critical of the EFL only making the Code mandatory at academy level, feeling that this sends a message that it is not being taken seriously and that this also provides loopholes for clubs, which may be evidenced through non-compliance with the Code during the pilot process. This aligns with the CRT approach, which states that when there are insufficient conditions to guarantee that anti-racism promises are actually performed, they can become “non-performatives” and ultimately perpetuate inequality (Hylton, 2010, p. 345). Additionally, whilst some participants praised the EFL for introducing the Recruitment Code, CRT suggests that it was likely only introduced because of “interest convergence” (Hylton, 2010, p. 345).

To conclude, the emerging perception of the EFL’s Recruitment Code within this research is that whilst the Recruitment Code can be seen as a significant first step with some potential for success, at present it is a flawed form of positive action to address racial disadvantage within English professional football coaching. This is particularly due to the lack of communication, transparency and enforcement associated with the Recruitment Code. The following Chapter within this thesis considers whether the perceived problems with the Recruitment Code identified within this Chapter are exacerbated by a lack of adherence to the positive action legal framework, both in relation to the positive action provisions of the Equality Act 2010 and reflexive regulation more broadly.

Chapter Seven

The Legal Framework: Positive Action and Reflexive Regulation

7.1 Introduction

This Chapter considers the legal context behind the EFL's Recruitment Code. It is argued throughout this thesis that the EFL's Recruitment Code fits within a broad conceptual model of positive action as a form of substantive equality that recognises "the cycle of disadvantage" (Manfredi, 2017, p. 6) that underrepresented groups face, in this instance the barriers to BAME manager and coach careers. However, whilst the Recruitment Code may align with positive action conceptually, it does not necessarily follow that the Code will fit within the legislative framework and be a legally permissible form of positive action. As this thesis considers whether the Recruitment Code is a flawed form of positive action aimed at addressing the racial disadvantage that BAME managers and coaches face, this Chapter considers whether the perceived problems with the Code identified in Chapter Six are exacerbated by a lack of adherence to the positive action legal framework. Further, the legal framework in Britain is intended to provide a form of "reflexive regulation" to encourage good practice beyond what is mandated by the law, encouraging voluntary action. As such, this Chapter further considers whether the Recruitment Code falls down as an effective form of reflexive regulation, drawing on participants' perceptions of the consultation process behind the introduction of the Code and its perceived lack of monitoring and enforcement.

7.2 The EFL's Recruitment Code and the Positive Action Legal Framework

Whilst the EFL's Recruitment Code fits within a broad conceptual model of positive action, Gardiner and Riches (2016) argue that the legality of such a measure under the Equality Act 2010 remains a "key issue" (p. 109). As such, it is important to consider the EFL's Recruitment Code in light of the positive action legal framework at both European and domestic levels.

The development and content of this legal framework is outlined in detail in Section 2.10 of the Literature Review in Chapter Two. As outlined in Chapter Two, positive action in the UK is covered by Sections 158 and 159 of the Equality Act 2010, which were introduced to extend what is permissible in the UK “to the extent permitted by European law”, with the Explanatory Notes stating that Section 158 must “be interpreted in accordance with European law” (Explanatory Notes, para. 512). Accordingly, when considering the extent to which the EFL’s Recruitment Code fits within the legal framework, reference must also be made to the European legal framework. Sections 158 and 159 created a distinction between general positive action measures and measures concerning recruitment and promotion that is not seen at European level. Sections 158 and 159 are mutually exclusive and where one Section applies, the other will not; therefore, it is important to firstly consider with which Section the EFL’s Recruitment Code will more closely align.

7.2.1 Section 159 Equality Act 2010

To consider the EFL’s Recruitment Code in light of the Section 159 tiebreak, Corapi (2012) argues that an interview rule is most likely covered under this Section because a guaranteed interview is “exactly what section 159 is intended to permit” (p. 381). He states that, because Section 159 permits organisations to factor in race when determining which candidates to recruit, a rule that requires clubs to interview at least one suitably qualified BAME candidate (where one applies) would be permitted under Section 159, providing that if the club feels that no such candidate has applied, the rule does not apply (p. 381). Section 159(5) outlines what is meant by “Recruitment” and states that this “means a process for deciding whether to... (a) offer employment to a person, (b) make contract work available to a contract worker...”. It does not further define what activities may be considered within the scope of “a process for deciding...” and there is no case law that considers this. However, guidance from the Government Equalities Office Quick Start Guide (2011) on positive action refers to measures involving shortlisting as falling within the scope of Section 159. Whilst this guidance is merely

persuasive, it suggests that the EFL's Recruitment Code on shortlisting may therefore need to be considered under Section 159.

In order for the EFL's Recruitment Code to fit within the scope of Section 159, there are a number of requirements that need to be met. Firstly, the employer must "reasonably think" (Section 159(1)) that there is significant disadvantage or disproportionately low participation by those who share a protected characteristic. This aligns with the requirement from the European jurisprudence for there to be underrepresentation of the group that benefits from the positive action initiative. The EFL's Recruitment Code would clearly appear to satisfy the requirement for disadvantage, disproportionately low participation, or underrepresentation. On 1st September 2017, only 4.6% of coaches in senior coaching positions were BAME, compared with roughly 25% of professional players (SPTT, 2017, p. 6), suggesting a significant underrepresentation of BAME managers and coaches compared to their white counterparts.

Section 159(4)(a) of the Equality Act 2010 states that the tie-break will only apply in instances where "A is as qualified as B", seemingly seeking to give effect to the requirement at European level for candidates to be "equally qualified". This means that for the EFL's Recruitment Code to satisfy this requirement, the recruiting club can only take an applicant's protected characteristic into account when deciding whom to shortlist if the candidates are "as qualified as" each other. When considering what is meant by "as qualified as", the Explanatory Notes to the Act state that "The question of whether one person is as qualified as another is not only a matter of academic qualification, but rather a judgement based on the criteria the employer uses" (para. 518). In a football context, this is likely to mean considering things such as previous management and coaching experience alongside coaching qualifications. The Government Equalities Office Quick Start Guide (2011) further outlines that artificially low thresholds are not permitted. This was seen in the case of **Furlong**, within which the Tribunal emphasised the need for employers "to not impose artificially low thresholds in terms of a recruitment procedure, nor to completely ignore a qualitative assessment of candidates

and then re-introduce a merit based analysis in a later part of the recruitment” (para. 139). Further, Gardiner and Riches (2016) argue that “A Rooney-type Rule that sets a BME quota would, however, go beyond the realms of positive action if appointment were based primarily upon a protected characteristic” (p. 109) rather than merit. The requirement for candidates to be “as qualified as” each other may present issues for the EFL’s Recruitment Code. Whilst the EFL states that “Nothing in this Regulation obliges a Club to offer a specific Role to a Minority Candidate” and that the appointment “should be made on the basis of merit alone” (n.d., para. 115.6), the Regulations do not specify that there should be a tie-break decision when shortlisting, but instead state that where an application is received from a Minority Candidate, clubs must “invite one or more Minority Candidate(s) to interview” (n.d., para. 115.1.3). As such, requiring clubs to interview a BAME candidate because of their protected characteristic, without considering whether they are “as qualified as” a non-BAME candidate that is not invited to interview may take the Code outside of the scope permitted by Section 159. Furthermore, as outlined above, during the pilot stage of the Recruitment Code, it was stated that clubs should “include at least one suitably qualified BAME candidate... on the interview shortlist” (EFL, 2015) and the requirement that candidates be “suitably qualified” may be considered an artificially low threshold at which to apply the tie-break in light of the Section 159(4) requirements.

Whilst the Section 159 “as qualified as” requirement may have been introduced to bring the domestic framework in line with the scope at European level, Selanec and Senden (2013) argue that the boundaries of what is permitted at European level may have been misunderstood. They highlight how the positive action measure in **Abrahamsson** - which gave preference to female candidates that possessed “sufficient” (rather than “equal”) qualifications - failed on proportionality because of its lack of transparency and a savings clause, not because the measure allowed for sufficiency rather than equivalency. They argue that the European law framework permits a threshold approach, whereby a candidate can benefit from a positive action measure if they reach a threshold of being “sufficiently” qualified, rather than needing to be “as qualified as” a candidate not from the underrepresented group. They

contend that this enables employers to consider “as ‘equally qualified’ those candidates of [the underrepresented group] who are not equal in terms of traditional professional qualification” (Selanec & Senden, 2013, p. 12). This means that a candidate from an underrepresented group that has “inferior traditional professional qualifications” could be considered to be “‘equally qualified’ for the purpose of the preferential treatment if the employer finds that [their] talents, which [they] could not demonstrate in a traditional fashion due to systemic barriers... could potentially turn into assets” (Selanec & Senden, 2013, p. 13). Taking this threshold approach may mean that the EFL’s Recruitment Code is more likely to be legally permissible. This approach would mean that Clubs do not have to determine that a BAME manager or coach is “as qualified as” a non-BAME manager or coach not invited to interview, but that they are “sufficiently” qualified, even if this is in a less traditional fashion. This is particularly relevant in this context, as BAME managers and coaches are less likely to be able to demonstrate coaching qualifications due to the fact that such managers and coaches often have “limited access to and negative experiences of the high level coach education environment” (Bradbury et al., 2018, p. 313). Such managers and coaches are also less likely to be able to demonstrate past experience due to the continued underrepresentation of BAME managers and coaches within English professional football. The threshold approach would thus enable clubs to consider beyond traditional professional requirements and instead look at potential, which could turn into an asset. However, it is important to note here that following the United Kingdom’s withdrawal from the European Union, from 1 January 2021, the domestic rather than European position will likely be applicable, subject to any transition agreement.

Although the above may provide a broader scope, Selanec and Senden (2013) highlight how “the Court stressed that any such positive system of qualification evaluation must be based on clear and unambiguous evaluation criteria and must be transparent” (p. 13). Further, the requirement for a “savings clause” that provides an objective assessment of all criteria specific to the individual candidates is well established in European law on positive action (see Section 2.10.3, Chapter Two). Section 159(4) of the Equality Act 2010 arguably

introduces this savings clause requirement into British law. It states that the tie-break is only permitted where the employer “does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment” and that “the action in question must be a proportionate means of achieving the aim” (Section 159(4) Equality Act 2010). Further, two recent British cases suggest that positive action measures that constitute a blanket application of a measure will not be permitted. Although a non-employment case, in **AIHA** (and upheld by the Supreme Court) it was found that a positive action measure that allocated social housing properties to members of the Orthodox Jewish community was proportionate due to the level of disadvantage the community faces and the fact that it was not blanket policy. In addition to this, the positive action scheme in **Furlong** was found to be unlawful because it did constitute a blanket approach. Further, the Explanatory Notes to the Act state that “each case must be considered on its merits” (para. 519) and Gardiner and Riches (2016) argue that Section 159 should only be used “on an individual case-by-case basis” (p. 109). It could thus be argued that the EFL’s Recruitment Code, which appears to require clubs to interview a BAME candidate where an application is received for academy positions and to do the same for first team positions in instances where full recruitment processes are run, could be considered a blanket policy as it appears to operate in every instance “where any application is received from any Minority Candidate(s)” (EFL, n.d., para. 115.1.3). However, it should be noted that a decision as to whether the Recruitment Code constitutes a blanket policy can only be made by a Tribunal on consideration of all of the facts and it is not argued here that the Code can definitively be considered to be outside of the scope permitted by Section 159.

Furthermore, Section 159(4)(c) states that measures under this Section must be “a proportionate means of achieving the aim”. A key element to note here is that when considering what is meant by “proportionate”, EHRC Code of Practice (2015) states that “If positive action continues indefinitely, without any review, it may no longer be proportionate” (p. 168). As such, they state then when implementing positive action measures, “it would be advisable for employers to indicate that they intend to take the action only so long as the

relevant conditions apply, rather than indefinitely” (p. 169). At present, it is not clear from the EFL’s Regulations when the Recruitment Code may cease to apply. In order to be proportionate, the EFL thus may need to provide further information on when the Recruitment Code will be reviewed and at what point it will no longer apply.

7.2.2 Section 158 Equality Act 2010

Whilst the EFL’s Recruitment Code may appear to align more closely with Section 159 because it concerns recruitment, it should be noted that there is currently no case law on interview rules similar to the Recruitment Code and therefore a Tribunal may consider it to align more closely with Section 158 (as outlined in Section 2.9.4 of Chapter Two). When considering the EFL’s Recruitment Code in light of Section 158, it does appear that the requirements under Section 158(1) are met due to the significant underrepresentation of BAME managers and coaches within professional football discussed above. As such, the key consideration is likely to be whether the Recruitment Code can be considered “a proportionate means of achieving the aim of” enabling BAME coaches to overcome disadvantage and participate in recruitment processes (Section 158(2)). The Explanatory Notes to the Equality Act 2010 state that when determining the extent to which a positive action measure is proportionate, several things will be considered, including “the seriousness of the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering them” (Explanatory Notes, para. 512). It is again important to note that there is a general lack of case law in relation to positive action; however, as outlined above, the European jurisprudence, to which Section 158 gives effect, does not permit the automatic allocation of benefits to the underrepresented group. Further, as discussed above, the two recent UK cases of **AIHA** and **Furlong** appear to reinforce the approach that measures constituting a blanket application will not be permitted and it may be that the EFL’s Recruitment Code is considered a blanket approach if it operates in every instance “where any application is received from any Minority Candidate(s)” (EFL, n.d., para. 115.1.3). However, as with Section 159 above, this is again something that only a Tribunal can decide.

Further, the two cases referenced above can also be distinguished from a consideration of the EFL's Recruitment Code under Section 158, as **AIHA** is a non-employment case and **Furlong** considers a scheme under Section 159, rather than Section 158. Furthermore, it may be that there is greater discretion in the application of the EFL's Recruitment Code in practice than has been publicised, which could mean that the Code would not be considered a blanket policy and therefore may fit more comfortably within the scope of Section 158.

As outlined in further detail in Section 2.10.3 of Chapter Two, it is important to acknowledge the potential impact of the UK's withdrawal from the European Union. As outlined above, the positive action provisions of the Equality Act 2010 were introduced to bring UK domestic law in line with the European framework. As such, if the UK is no longer bound by European law, the UK may adopt a different approach towards positive action, either a more radical approach towards the concept, removing positive action altogether, or maintaining the current framework (YWT, 2018).

7.3 Reflexive Regulation

In addition to bringing the British positive action legal framework in line with the scope permitted by European law, the positive action provisions of the Equality Act 2010 were also intended to introduce a form of reflexive regulation in Britain. McCrudden (2007) argues that the legislative approach of 'reflexive regulation' is evident in the "significantly greater legal space for employers to engage in positive action" within the Equality Act 2010 (p. 258). As such, when considering whether the problems with the EFL's Recruitment Code's as a form of positive action are exacerbated by its lack of clear adherence to the legislative framework, it is important to also evaluate whether the Recruitment Code falls down as an effective form of reflexive regulation.

Reflexive regulation theory is outlined in further detail in Section 2.11 of Chapter Two; however, this approach can be thought of as "enforced self-regulation" (McCrudden, 2007, p. 265). This focuses on the idea that, instead of introducing mandatory laws, it is more successful to introduce permissive

legislation, whereby social systems can act but are not forced to do so. This recognises “the inner logic of individual social systems” (Cunningham, 2015, p. 144) and allows them to develop solutions as they see fit.

Fredman (2012) argues that “despite increasingly sophisticated antidiscrimination laws, discrimination and inequality have proved remarkably resilient”, therefore questions should be asked around the law’s ability to achieve social change (p. 265). Further, CRT suggests that ‘colour-blind’ anti-discrimination laws will do little to redress racial inequality because values such as the rule of law and individual rights reflect the interests of the dominant group and thus maintain the status quo (Delgado and Stefancic, 2001). The limitations of the previous complaints-based legislative approach may be seen within football. Whilst there exist anti-discrimination laws that apply to football - as with any other area of society - which provide a complaints process if a BAME manager or coach is discriminated against, it has been argued that challenging discrimination within the game may lead to the “defensive and negative attitudes” referenced by Hepple (2011, p. 266). Kilvington (2016) argues that those inside football that challenge discrimination may be branded ‘trouble-makers’. Further, Scott (2015) argues that in European football, when BAME players complain about racialised behaviour, this has often been “held against them... as a character issue” (p. 1909), a reputation which is then hard to shake; as such, BAME players often remain silent about racism due to their “need to survive within white dominated institutions” (p. 1909). Given the networks-based methods of recruitment outlined in Chapter Four, being seen as a ‘trouble-maker’ will further increase difficulties for aspiring BAME coaches in breaking into these pre-established networks. In addition to this, and as outlined in greater detail within Chapter Four, participants within this research identified the following barriers to the career progression of BAME managers and coaches: higher standards expected of BAME managers and coaches; the extra pressure such managers and coaches face; the lack of role models; stereotypes associated with BAME managers and coaches; the limited opportunities for such managers and coaches, and the recruitment practises used. Considering these barriers - particularly the methods of recruitment, stereotyping and lack of role models – it is arguably clear to see how a

retrospective complaints-based approach, based on taking reactive action to instances of discrimination, would not work to combat more covert causes of inequality.

7.3.1 Reflexive Regulation and the Specificity of Football

The limitations of the command-and-control approach may be seen through the discussions that ten of the 17 participants in the semi-structured interviews in this research had on the internal dynamics of football, which set it apart from other sectors. This can be summarised by the below views of Ade, a Black British participant that both played and managed within the professional game:

“[Football] is a closed world, you know, everyone knows everyone... It's got its own little society, rules and non-rules... things happen in football from an employment perspective that wouldn't happen anywhere else. There's no trade unions... for people working within football clubs, so you just work whatever. The manager brings you in at five o'clock, you come in at five o'clock and that affects the kitman, the analyst. There's no nine to five, nothing nine to five in football at all, and that's why you either like it or loathe it... There's no room in the tent to stop and say, 'right what does this look like, what does that look like?' It's just been a constant treadmill of people, keep walking until you fall off, next, keep walking until you fall off... Just this constant flow of people passing through with the same experiences of football” (Ade)

Ade's views suggest that football is unique in the way that it operates, particularly with regards to informal rules and working conditions. Ade believes that these conditions are accepted and not challenged because there is no room to stop and consider ways in which they can be changed or improved and thus “*you either like it or loathe it*”. This view that football is unique and, particularly, the references to football having its own society and rules and that things happen in football in relation to employment that would not happen within other industries appears to align with the concept of the specificity of sport. This is a term used to refer to “the inherent characteristics of sport which

set it apart” from other areas (European Commission, 2016, p.3). The specificity of sport relates to the sports governance theory of sole autonomy, which would allow sport to govern itself. Foster (2019) argues that many sporting bodies have “developed an ideology that it is an autonomous legal order” which has resulted in them being able to resist review from legal changes “and maintain a degree of self-governance” because of its “uniqueness” (p. 1). Further, Beloff (2012) argues that sporting rules are distinct to societal norms and, particularly, general principles of equality law, thus appearing to support Ade’s view that things happen in football that would not happen in other industries.

In addition to this, Philip made specific reference to legal intervention:

“any kind of intervention is treated with suspicion, so bear in mind that football, in a sense, in many ways has been isolated and sheltered from any kind of legal interference, political interference, for the vast majority of its history, it’s been completely left alone, so football is very used to running itself how it wants, when it wants” (Philip)

This appears to suggest an emerging perception that football is resistant to outside intervention as there has been very limited legal interference throughout its history and, as such, it is used to running itself how it sees fit. This aligns with the approach taken by the European Commission (2016) to sport generally, outlined above.

This was a view echoed by Andrew:

“It’s a case of ‘you can’t say to my football club that’s been here over a hundred years who I need in my football club and who I want to interview to work in my football club... who are you to tell me who I can and can’t look to potentially recruit to my football club?’” (Andrew)

Philip and Andrew’s views outline a perception that decision makers within football are very resistant to outside interference, due to the fact that many

clubs have been in existence for many years and have faced very limited interference throughout that time. This perception, and the concept of the specificity of sport, detailed above, may demonstrate why laws based on the ‘command-and-control’ approach - with solutions aimed at society in general imposed on subsystems - are unlikely to be successful in addressing inequalities that exist within football.

The above participants referred to both the characteristics of football that make it unique and the limited outside interference as reasons why football may be resistant to change. However, many commentators are critical of this sole autonomy, or specificity, approach (Meier and García, 2021). Instead, over recent years there has been a move towards an approach focused on “supervised autonomy” (Foster, 2000). This means that sports organisations are given some degree of autonomy, but in return are expected to act responsibly and meet minimum standards of good governance (Foster, 2000). Meier and García (2021) describe this as a “middle ground” between sole autonomy and direct regulation (p. 3). The middle ground that the supervised autonomy approach provides may mean that measures such as the EFL’s Recruitment Code are more likely to succeed, and the Recruitment Code itself may demonstrate this supervised autonomy working in practice. This approach means that the EFL is required to act responsibly and comply with national and international laws but is given the autonomy to develop measures as it sees fit. It can be argued that this is what the EFL has done in developing the Recruitment Code, by using their autonomy to develop a measure that addresses a prevailing inequality issue in a way that it felt most appropriate. As such, because the EFL developed the measure itself, this may make it more likely to be successful and face less cultural resistance. Because of this, whilst many participants appeared to believe that the autonomy that football has historically been afforded may be a barrier to achieving change, the supervised autonomy approach may actually assist in the successful implementation of measures such as the EFL’s Recruitment Code.

In addition to this, the supervised autonomy approach appears to work with the broader legislative approach of reflexive regulation. Fredman (2012)

argues that the way to overcome the issues with command-and-control approaches is to “fashion new legal tools” (p. 265). Teubner’s (1987) solution is to utilise a reflexive regulation approach “which does not seek to impose substantive rules on sub-systems but instead works with the internal dynamics of those systems” (Hepple, 2011, p. 320). Instead of solutions being imposed on a subsystem, the subsystem is “required to come up with its own set of solutions” (Fredman, 2012, p. 419), with the law acting as “a stimulus to self-regulation” (McLauglin, 2014, p. 5). This is similar to the supervised autonomy approach taken in sports law, which gives sporting authorities a degree of autonomy providing they act responsibly and meet minimum standards of governance (Foster, 2000). In light of the above participants’ discussions on the resistance that outside interventions face, an approach which does not impose rules on football but instead “works with the internal dynamics” (Hepple, 2011, p. 320) or the supervised autonomy sporting authorities like the EFL are given may be more likely to be successful. Arguably, using the positive action provisions of the Equality Act 2010 enabled the Recruitment Code to be introduced; it empowered the EFL to devise their own set of solutions using their supervised autonomy, based on their understanding of both the problems faced by BAME managers and coaches, and the internal dynamics of football. Further, whilst the EFL are a governing body, arguably they may still be considered ‘insiders’ to the game and part of football “*running itself how it wants*” (Philip) and thus will not necessarily face the same resistance as external legal or political measures.

7.3.2 Reflexive Regulation and the EFL’s Recruitment Code

Commentators on reflexive regulation have identified conditions required for measures devised through reflexive regulation to be successful. As such, the EFL’s Recruitment Code can be considered in light of reflexive regulation theory. Hepple (2011) states that effective reflexive regulation involves three interlocking mechanisms:

internal scrutiny by the organisation itself... The involvement of interest groups... who must be informed, consulted and engaged in

the process of change ... [and] an enforcement agency... which should provide the back-up role of assistance, building capabilities and ultimately sanctions. (p. 321)

7.3.2.1 Internal Scrutiny

Hepple's (2011) first mechanism is internal scrutiny. Fredman (2012) argues that internal scrutiny within each subsystem is an essential characteristic of reflexive regulation, as it builds on the "problem-solving expertise of those who are in the best position to bring about change" (p. 272). Prior to the introduction of the Recruitment Code, the EFL stated that the measures were finalised by "a working party of clubs" (EFL, 2016). If this is the case and a working party of clubs devised the measures based on their own assessment of the problem, and their appreciation of the specificity of football, reflexive regulation theory suggests clubs will feel greater ownership over the solutions, which are therefore more likely to be followed. Whilst the internal scrutiny is considered an essential part of Hepple's (2011) three interlocking mechanisms, no participants within this research discussed the internal scrutiny undertaken by the EFL in developing the Recruitment Code, which may suggest that there is a lack of transparency regarding this process.

7.3.2.2 Interest Groups

The second mechanism concerns the involvement of different interest groups. The consultation that took place prior to the introduction of the Recruitment Code was discussed by participants within this research and two participants within this research that work as EDI Practitioners within football discussed their experiences with this:

"I was invited in... for a, it felt like a very last-minute conversation about what could be done... and I know that other bodies had been invited in for that conversation as well" (Marcus)

“I think they spoke to a number of Black coaches and they certainly spoke to us... How much they spoke to clubs I don’t know, but I think they tried to speak to as many people as possible to explore and explain why they had to do it this way” (Malcolm)

The above two participants’ experiences suggest that there was some level of consultation with different stakeholders, as required by Hepple’s (2011) second mechanism. Supporting this perception, when the EFL announced these measures, they stated that several organisations provided them with advice, including the NFL, the FA, Premier League, LMA, PFA and Kick It Out (EFL, 2016). Further, the view that *“they spoke to a number of Black coaches”* is particularly significant. Fredman (2012) argues “deliberative democracy” - involving the underrepresented group itself - is a key reason why reflexive regulation can be successful in addressing structural inequality (p. 272). She argues that groups “subject to discrimination inevitably have unequal bargaining power and are unlikely to achieve gains” (p. 272) through previous approaches; therefore, the reflexive approach, which “does not aim to resolve the issue according to the balance of political... power” (p. 272) but through deliberation, will result in fairer outcomes. This again may demonstrate the benefits of taking a reflexive approach. As the EFL led on the introduction of the Recruitment Code, this enabled them to engage with key stakeholders, including BAME coaches, which may not have been the case had this been a measure introduced or imposed by an external agency.

Whilst the above two participants did refer to their experiences with the consultation process, Marcus described this as *“a very last-minute conversation”* and Malcolm stated *“I think they spoke to a number of Black coaches.... How much they spoke to clubs I don’t know”*. This may suggest an element of criticism of the EFL’s consultation and, particularly, a lack of transparency regarding the process. Further, Ashleigh, who works within EDI in football, stated:

“I don’t know whether, maybe it’s just that they haven’t publicised it enough, I don’t think the consultations that have led to it were publicised enough” (Ashleigh)

This participant believes that the consultation behind the introduction of the Recruitment Code was not publicised widely enough and arguably this lack of transparency may have caused stakeholders to question what actually took place during this consultation, with Philip stating:

“with my sceptic’s hat on, there must have been some closed-door conversations, guarantees made to these clubs that they wouldn’t push this” (Philip)

This appears to suggest that the lack of transparency regarding the consultation process has led to this participant becoming sceptical of the way in which the Recruitment Code was introduced. As a key principle of reflexive regulation is that subsystems are required to devise their own measures which will then be followed voluntarily, a lack of transparency regarding the consultation process could have a detrimental impact on the extent to which the measures are supported. Given Fredman’s (2012) arguments on the importance of consulting with underrepresented groups, the lack of transparent detail on the ways in which BAME managers and coaches were consulted could further compound this issue; a lack of consultation in this regard may mean that the EFL’s Recruitment Code is less likely to be successful in addressing structural inequalities that BAME managers and coaches face. Further, even a perceived lack of consultation may have a negative impact. For example, some participants within this research questioned whether such managers and coaches would support such measures:

“Loads of coaches have come out and said... that they would rather be there on merit, rather than just pushed in” (Joe)

The notion that BAME managers and coaches *“would rather be there on merit”* is a key consideration in the perception of positive action and, as such, is

discussed in greater detail in Chapter Five. However, if the EFL did consult with BAME managers and coaches, as suggested by Malcolm and required by Fredman (2012) for effective reflexive regulation, greater transparency on this process could reduce concerns on the extent which such stakeholders support the Recruitment Code and thus lead to greater buy-in.

7.3.2.3 Enforcement Mechanisms

Whilst a key principle of reflexive regulation is that subsystems are encouraged to act voluntarily, Hepple's (2011) third mechanism for successful reflexive regulation involves "an enforcement agency... which should provide the back-up role of assistance, building capabilities and ultimately sanctions" (p. 321). The need for some form of external monitoring was outlined by Cara:

"I think what would have helped [the Recruitment Code] would have been an external evaluation of the pilot. I think that would have helped it a lot because, not that people don't trust what the EFL is saying but it's a bit like marking your own work. To have an external validator with integrity validate it and say this is the learning and this is exactly what it is, I think might have helped the process a bit more" (Cara)

Cara states that an external evaluation of the Recruitment Code would have helped to provide validation, and this implies that the current lack of an external evaluation or an enforcement agency is a limitation of the Code in its current format. This seems to align with Hepple's argument that an enforcement agency is needed for successful reflexive regulation. Hepple (2011) further states that a limitation of reflexive regulation is that it can "simply serve to legitimate or rubber-stamp the exercise of corporate and institutional power unless... the enforcement agency has the power to ensure that agreements uphold the values of the legislation and, where necessary, to impose deterrent sanctions" (p. 323). As such, because the Recruitment Code was introduced without such an external agency, the above participant's views on the EFL's Recruitment Code may demonstrate one of the key potential limitations of reflexive regulation in practice. However, whilst the above participant

discussed the lack of an “*external evaluation*” of the Recruitment Code as a key limitation, the EFL did appear to undertake some form of monitoring process, as evidenced by their publication of the results of the pilot (EFL, 2017a). As it is the 72 EFL clubs that are asked to comply with the Code, rather than the EFL itself, the EFL could be considered the “enforcement agency” in this context, as required by Hepple (2011, p. 321). However, Cara appeared to believe that “*an external validator with integrity... might have helped the process a bit more*”. Further, Hepple (2011) argues that the enforcement agency should ultimately provide sanctions, something which the EFL have so far not implemented. This was discussed extensively by many participants within this research, for example, Ian stated:

“if there are informal rules and there aren't any sanctions, then it will probably just be a tick box exercise that nobody, including the employers and the fans, are really that bothered about” (Ian)

Ian’s perception that the voluntary Recruitment Code, with no associated sanctions, will become something that clubs do not follow further supports Hepple’s (2011) argument that reflexive regulation without an enforcement agency that will “impose deterrent sanctions” will “simply serve to legitimate or rubber-stamp” the process (p. 323). Further participants also discussed the importance of sanctions:

“sanctions will show clubs the importance of the initiative” (Harry)

The suggestion that clubs will not take the Recruitment Code seriously until sanctions are introduced was echoed by Marcus:

“I think ultimately that's how clubs will take it seriously. I think without teeth... clubs aren't likely to take it forward with the seriousness that's needed” (Marcus)

This perception of the voluntary aspect is supported by Braithwaite’s (2008) argument that an important feature of successful reflexive regulation is that it

is ultimately supported by a gradual escalation of sanctions until compliance is reached. Furthermore, in addition to the importance of sanctions being discussed by commentators on reflexive regulation, this has also been discussed by those commenting on the Recruitment Code more specifically. The lack of sanctions has been one of the key criticisms of the EFL's Code, with several commentators stating that sanctions are needed for there to be any real impact. Similar to Harry's view that clubs will not take the Recruitment Code seriously "*without teeth*", Duru argues that "For the Rooney Rule concept to be effective in English football, it must have teeth" (Kick It Out, 2017, para. 11) and Lord Ouseley has also stated that the Code needs to be "backed up by sanctions for non-compliance" due to the limited adherence during the pilot (Slater, 2017, para. 19), aligning with the views of the participants detailed above. Further, the lack of enforcement mechanisms may also mean that the conditions required to make the EFL's Recruitment Code a "performative act" rather than a "non-performative" under CRT are absent, which may mean that the Recruitment Code can be seen to perpetuate, rather than address, inequality (Hylton, 2010). However, it should be noted that the introduction of sanctions for non-compliance may make the Recruitment Code more likely to be considered a 'blanket policy' which, as outlined in Section 7.2, would be outside of the scope permitted by the current positive action legal framework.

7.4 Conclusion

As outlined throughout, whilst the Recruitment Code may align with positive action conceptually, it does not necessarily follow that the Code will fit within the legislative framework and be a legally permissible form of positive action. As this thesis considers whether the Recruitment Code is a flawed form of positive action aimed at addressing the racial disadvantage that BAME managers and coaches face, it was important to consider whether the problems with the Recruitment Code are exacerbated by a possible lack of adherence to the legal framework.

The EFL's Recruitment Code concerns shortlisting, which arguably can be considered part of "a process for deciding" who to appoint (Section 159(5)),

thus it may need to be considered under Section 159 of the Equality Act 2010. In order for the measure to fit within the scope of this Section, it is likely that there should be a tie-breaker situation, where the recruiting club shortlists a BAME candidate that is “as qualified as” a white candidate that is not invited to interview; however, the threshold approach, advocated for by Selanec and Senden (2013) but arguably unadopted within the domestic legal context, may provide further flexibility in this regard. Further, the tie-break must be decided on a case-by-case basis, with there not being a policy of automatically favouring BAME candidates. At present, it may be that the EFL’s Recruitment Code does not easily fit within the permitted scope of Section 159 as it appears to operate in every instance “where any application is received from any Minority Candidate(s)” (EFL, n.d., para. 115.1.3). Case law on positive action generally is limited at both UK and EU level and there is currently no case law that considers the extent to which an interview rule fits within the legal framework. Furthermore, it is important to note that there are numerous organisations that operate similar rules at shortlisting stage. A decision as to whether the EFL’s Recruitment Code fits within the legally permitted scope of positive action can only be made by a judge on consideration of all of the facts and the way that the Code operates in practice, the details of which may not be public, and therefore it cannot be argued here that the Recruitment Code is definitively outside of the scope permitted by the Equality Act 2010. However, the lack of clarity regarding the Recruitment Code and the extent to which it fits within the legislative framework suggests that the issues with the Code identified within Chapter Six are exacerbated by this lack of adherence to the legal framework, particularly in relation to proportionality and its status a blanket approach.

Because the positive action provisions of the Equality Act 2010 were intended to introduce reflexive regulation in Britain, reflexive regulation theory can be used to further evaluate the Recruitment Code as a form of positive action. The reflexive approach also appears to work with the supervised autonomy that sporting authorities like the EFL are afforded, which may result in less cultural resistance when measures like the Recruitment Code are developed using this autonomy. However, when considered in light of Hepple’s (2011)

requirements for effective reflexive regulation, the EFL's Recruitment Code appears to fall short of the standards required. Although the EFL stated that the Recruitment Code was finalised by a "working party of Clubs" (EFL, 2016) which may result in greater ownership of the measures, participants within this research were critical of the lack of transparency of these consultations, with most participants unaware of what consultation had taken place. Further, the two participants that did speak to the EFL were also somewhat critical of these conversations, with one stating that they did not know how much the EFL had spoken to clubs and unsure on the extent to which they had consulted with BAME managers and coaches. The latter is particularly significant as Fredman (2012) argues that "deliberative democracy" with the underrepresented group, in this case BAME managers and coaches, is critical to the success of reflective regulation measures (p. 272). As such, a failure to consult extensively with such stakeholders would be a key criticism of the EFL's Recruitment Code; a lack of transparency regarding this may have caused one focus group participant to question the extent to which BAME managers and coaches support the Code. Hepple's (2011) third mechanism requires an "enforcement agency... and ultimately sanctions (p. 321) and the lack of associated sanctions was discussed by many participants within this research, with some believing that sanctions would show how important the Recruitment Code is and that without them, the Code would be unlikely to be followed. This aligns with Hepple's (2011) view that reflexive regulation without sanctions "will simply serve to legitimate or rubber-stamp" the process (p. 323). It also aligns with the views of key commentators on the Recruitment Code, such as Duru, who argues that, in order for it to be effective, "it must have teeth" (Kick It Out, 2017). However, the legality of sanctions for non-compliance to a positive action measure can be questioned in light of the prohibition on blanket policies. The lack of compliance with Hepple's (2011) requirements for effective reflexive regulation may further mean that the Recruitment Code can be considered as "non-performative" (Hylton, 2010) under CRT, as the conditions required to ensure that the Code is actually performed are absent.

To conclude, the problems with the Recruitment Code identified within Chapter Five appear to be exacerbated by the Code's lack of clear adherence to the

positive action legislative framework. Although it cannot definitively be stated that the Recruitment Code does not constitute a legally permissible form of positive action in the Britain, the lack of clarity regarding this raises key questions on both the proportionality and effectiveness of the Recruitment Code, suggesting that it may be a flawed form of positive action to address racial disadvantage within professional football coaching. Further, considering participants' perceptions of the consultation process behind the introduction of the Recruitment Code and its perceived lack of monitoring and enforcement, the Code also appears to fall down as a form of reflexive regulation. This is significant as the positive action provisions of the Equality Act 2010 were intended to introduce the reflexive approach in Britain and it appears that this reflexive approach could have had particular success within football, due to its resistance to outside interference in light of the specificity that it has historically been afforded.

Chapter Eight

Improving the Effectiveness of the EFL's Recruitment Code

8.1 Introduction

Chapter Six of this thesis outlined participants' perceptions of the EFL's Recruitment Code, identifying several problems with the Code that means that, at present, it can be considered a flawed form of positive action to address racial disadvantage within professional football coaching in England. Further, Chapter Seven considered the legal context behind the EFL's Recruitment Code, exploring whether the problems identified with the Recruitment Code are exacerbated by a lack of adherence to the positive action legal framework and whether the Code also falls down as an effective form of reflexive regulation. As such, the final data Chapter within this thesis focuses on participants' thoughts on ways to increase the success of the EFL's Recruitment Code. This details ways in which participants believe the Code can be developed to be more effective as a positive action initiative, such as stronger enforcement, sanctions and education, as well as measures that should be introduced alongside the Recruitment Code to create a holistic approach to addressing underrepresentation of BAME managers and coaches.

8.2 Enforcement

As outlined in Chapter Six and Chapter Seven, many participants within this thesis highlighted enforcement as a key barrier to the success of the EFL's Recruitment Code. This section outlines participants' suggestions for adaptation in relation to enforcement.

Many participants within this research felt that the EFL's Recruitment Code in the format that it was in when these interviews took place (piloted on a voluntary basis by ten teams for first-team football) was insufficient to address the underrepresentation of BAME managers and coaches. In particular, many

participants felt that operating the Code for first-team football on a voluntary basis meant that it was not being taken seriously by clubs and thus should become mandatory. Harry, who has both played and managed within the professional game, stated:

“The only way this initiative can ever be seen as important is to make it mandatory.” (Harry)

Harry’s view that making the Recruitment Code mandatory is the only way that it will be considered important suggests that, at present, it is not viewed as such. As stated earlier, Harry felt that the voluntary approach would not be successful:

“last season’s efforts highlight the fact that the voluntary aspect doesn’t work and must be mandatory. This will involve a rule change which I fear will never happen as clubs are far too powerful” (Harry)

The reference to the previous season’s efforts not working concerns the pilot, in which the Recruitment Code was not followed five out of a possible eight times (Slater, 2017) and thus may explain why this participant felt that the Code did not work in the voluntary format. This perception may be supported by the steps taken by the EFL and the EFL clubs following this pilot, after which it was announced that all 72 clubs had agreed to follow the Code from 1st January 2018 to the end of the 2018/19 season on a further trial basis (EFL, 2017b). In June 2019, the EFL introduced “a new Regulation ensuring that the principle of providing more opportunities to BAME candidates is mandatory when Clubs consider multiple applicants for a role” (EFL, 2019, para. 3), including the Code within Section 11 of the Rules and Regulations (EFL, n.d., paras. 115-116). This is particularly notable in light of Harry’s view, who feared that clubs are too powerful for a rule change to happen, suggesting a level of buy-in. However, whilst the EFL took the step to include the Recruitment Code within their Rules and Regulations, at present it is unclear as to how this will be enforced.

The lack of enforcement of the Code was identified within this research, where many participants felt that there should be sanctions for non-compliance:

“If you’re serious about doing something then you make it mandatory and you provide sanctions for people not doing it” (Philip)

“I think certainly the introduction of sanctions would move this forward” (Marcus)

The view outlined by Marcus suggests an emerging perception that sanctions are needed in order to prove that the EFL are serious about doing something to address the issue. The current lack of sanctions has been identified by key commentators as a key limiting factor on the success of the Recruitment Code. The SPTT (2017) argue that “until the code becomes a ‘must do’ there is likely to be little change in the overall picture among EFL clubs” (p. 4). Further, a report by McGurk et al. (2019) states that “the lack of penalties or sanctions against violations means that the risks of non-compliance are reputational rather than material” (p. 14) and lists as one of its key recommendations that “The EFL should propose, agree and implement a system of sanctions for contravention” of the Code (p. 38). This supports the view of the above participant that sanctions are needed in order to *“move [the Code] forward”*. This may also help to create the conditions required to ensure that the EFL’s Recruitment Code is a “performative” rather than “non-performative” act under CRT (Hylton. 2010). In addition to arguing that the Recruitment Code should have sanctions enforced for non-compliance, some participants within this research discussed the form that they believe these sanctions should take:

“I think there should be penalties and perhaps sanctions in terms of fines. Maybe it should go further than that, it should even lead to things such as point reductions” (Ian)

Harry agreed that there should be fines and points deductions:

“Huge fines or suspension of points would be something clubs will take seriously” (Harry)

The above-two participants’ support for both financial penalties and points deductions for the contravention of the Recruitment Code is supported by the report by McGurk et al. (2019), which argued that the EFL’s sanctions should include “financial penalties and/or league table points-deductions” (p. 38). Marcus, however, appeared to believe that only points deductions would suffice:

“I think points deductions would be the one that would make everyone sit up and take it seriously... if we had a monetary thing, it might hit Carlisle United very hard but, you know, Manchester United, that wouldn’t hit them hard at all so they wouldn’t feel the need to follow it... if it was based on that sanction. I think a points deduction hits everybody. I think if you lose three points and that loses you the title... or that gets you relegated because you can’t be bothered to run a process, then everybody is going to sit up and take notice of that” (Marcus)

This point highlights how the introduction of fines might have a disproportionate impact on some clubs compared to others. Marcus suggests that this would mean that clubs that could afford to pay the fine may not have an incentive to follow the Code. Instead, Marcus believes that a points deduction would cause all clubs to take notice. However, David, an Elite Grassroots Coach who had similar views on why a points deduction may be more effective, was ultimately concerned with the impact that this may have:

“if it’s going to be enforced, there has to be ramifications if you break that rule, now you could say that we’ll give fines, but when you’re referring to certainly Premier League clubs, that could be pocket money, or a drop in the ocean... so do you do something like a points deduction, take three points off? But then that would anger a lot of fans out there and probably make football even more hostile than it already is towards

Black players for example, because then they'd be seen as, they're the ones who are stopping the club progressing into Europe or whatever" (David)

Marcus and David outlined a perception that fines would not be an effective sanction for non-compliance due to the differing financial resources available to clubs. Whilst both participants referenced Premier League clubs, to whom the EFL's Recruitment Code does not apply, the differing impact that a financial penalty may have on clubs is an important consideration. This led to both participants discussing points deductions, with David arguing that a points deduction, which may have a significant impact on a club's league position, might anger fans which they felt to be a key concern because it might increase hostility towards Black players. This suggests a perception that an element of blame would be attributed to BAME individuals within football, rather than those that had not complied with the Code. This consideration may be unique to the sporting sector.

Chloe, however, felt that the anger of the fans could be used to encourage compliance:

"It could also have the opposite effect... fans are actually a really important part of the club, they're the ones that provide the support and provide the means by which those clubs can keep going so... I mean fans could just turn around and say 'well, why are you not just doing this? What's the problem here? Just do what you're supposed to do and then you won't get the deduction'... if the fans get annoyed, then clubs are perhaps more likely to do something about it" (Chloe)

Whilst David felt that the anger that fans may feel as a result of a points deduction might be directed at Black players, Chloe appears to suggest that they believe this anger may instead be directed at clubs that do not comply, which may encourage them to follow the Code. Whilst it is difficult to say which may be the most likely outcome, research by Lusted (2017) found that comments on an article calling for the introduction of a rule similar to the EFL's

Recruitment Code into English football highlighted “deep division – and strong scepticism – among fans about its value” (p. 49), suggesting that the response by fans is unlikely to be wholly supportive of the measure and, as such, any associated penalties. Further, research by the EHRC (2019) has found that there is often a lack of awareness or understanding “as to why positive action is necessary in the first place” (p. 58). This will again impact upon the likelihood that such a measure will be supported, as Manfredi (2017) argues that the “cycle of disadvantage” (p. 6), i.e. the structural challenges that BAME managers and coaches face, needs to be understood for such a measure to be supported.

In addition to concerns around the implications on the treatment of BAME players, David was also concerned about the impact that sanctions would have on the level of support that the Recruitment Code has from clubs:

“if we start forcing things on people, they might start pushing back or they might walk away and say, ‘well if I haven’t got that level of control, then I’m not going to do it anymore’” (David)

The idea that clubs might show resistance and refuse to follow the Code is similar to a view expressed by Andrew, an Elite Grassroots Coach, who stated:

“if you start sanctioning clubs for not doing it they will, then, I don’t think commit to it because they’ll sort of say ‘do you know what... we can’t, we can’t be dealing with this, let’s just not commit to it’” (Andrew)

The view that Clubs will resist following the Recruitment Code appears to relate to the way that the Code operated at the time of these interviews, where ten clubs volunteered to take part in the pilot for first team football. Andrew appears to believe that clubs would not volunteer to take part in the Recruitment Code if there was a risk of facing sanctions for non-compliance. This appears to support Hepple’s (2011) requirements for effective reflexive regulation, as he argues that whilst organisations should be encouraged to act voluntarily, there should be an enforcement agency that “has the power to ensure that

agreements uphold the values of the legislation and, where necessary, to impose deterrent sanctions” (p. 323). Hepple (2011) argues that without this, the measures introduced “may simply serve to legitimate or rubber-stamp” existing processes. This may be the case here if EFL clubs only notionally commit to following the Code providing they do not face sanctions for non-compliance as this suggests that clubs do not intend to follow the Code in every instance.

8.3 Need for Greater Buy-In and Understanding

In addition to 11 participants feeling that the Recruitment Code would have greater impact if there were specific sanctions for non-compliance, 16 of the focus group and interview participants within this research also recognised the need for greater buy-in and understanding of the Code in order to increase its chances of success.

David, an Elite Grassroots Coach, stated:

“realistically we all know that if you really want to make a difference and make a change, I think it's winning over hearts and minds as well as the business side of things” (David)

This suggests that David perceives that one way to make change happen is by increasing the level of buy-in so that decision makers support the Recruitment Code. The reference to “*hearts and minds*” was also made by Ade, an Ex-Professional Player and Manager:

“It's still very much the heart and minds thing. You can impose a rule all day long but if people don't buy it, they find ways around it and, actually, once they find ways around it, they'll carry on finding ways around it and people will never buy into it. What you have to say is 'right, this is the rule, but actually this is the reason for the rule and this is what the rule actually means'. However that's done, that needs to be put out there” (Ade)

Ade believes that a key way to increase buy-in is to make sure that the reason for the Recruitment Code and what the Code actually consists of is clearly understood. This suggests that he would support clear guidance for clubs, managers, coaches and fans that details importantly why the Code is needed, the Code's scope, limits, and how it operates in practice. This would further help to ensure that the "cycle of disadvantage" that BAME managers and coaches face is clearly understood, which Manfredi (2017) argues is important for the support of positive action initiatives (p. 6).

Further to this, Ade felt that better understanding of the Recruitment Code would have greater impact than the use of sanctions:

"Sanctions don't work anyway. They're not, they wouldn't be enforceable... That's just a big stick... I think that's counterproductive. What you need to do is actually sit down with people and say 'right, it's not a stick, it's not mandatory, however this is good practice and I dare you now to deviate from good practice.' Because guess what, they're OK with it and they're OK with it because people don't like being isolated. That's another thing, if you're now the only one banging the drum, that says one thing about you: you like banging a drum... Actually, you're on the wrong side of the argument here and people don't like that feeling" (Ade)

This further suggests that Ade believes that increasing understanding of the Recruitment Code as a form of best practice would be more effective than introducing sanctions, which he perceives to be "counterproductive". In addition to this, Ade appears to believe that widespread understanding of, and therefore buy-in for, the Recruitment Code would be particularly effective because it would lead to those who remain against the Code being perceived as against best practice, which could encourage them to act. Further, Ade's argument for a greater understanding of good practice suggests that, at present, this is limited. This perception is supported by research into positive action generally, within which it was stated that "a dearth of best practice

disclosure in this area, was felt to contribute to this lack of understanding and awareness” (EHRC, 2019, p. 52).

In addition to this, further participants also discussed the impact that introducing a measure without ensuring sound understanding can have. Richard, an EDI Practitioner, stated:

“before just saying ‘look we would like you to do this or expect you to do this’, we need to go in and say ‘this is why, this is why it needs to be done’ and then you know, this type of training can be done you know in a couple of hours, half a day, a whole day depending on the depth you require, but simply to understand the rationale and the reasoning behind it... It tends to get people's back up if people go in and start imposing new procedures without any backdrop or context, and I think that's where training comes in” (Richard)

Richard appears to argue that introducing a positive action initiative, such as the EFL's Recruitment Code, without a sound understanding of context or rationale can lead to resistance. This links to a perception of positive action generally, that stakeholders “are often unaware of or lack understanding as to why positive action is necessary in the first place” (EHRC, 2019, p. 58). Furthermore, Hepple (2011), as discussed in Chapter Seven, argues that for reflexive regulation to be successful, a key requirement is “The involvement of interest groups... who must be informed, consulted and engaged in the process of change” (p. 321). This further supports Richard's view that the context behind the EFL's Recruitment Code and why it is needed needs to be understood in order for the EFL's Recruitment Code to have greater buy-in and support.

Linking to this, Marcus appeared to offer some explanation as to why there is the need for this greater understanding in order for the Recruitment Code to be successful:

“what we have to remember of course is while many people have invested a lot of time and understanding in these issues, it's normally because they impact them or people around them directly. If you work in the diversity sector... if you're of a diverse background, you will go far beyond the call of duty to get to understand those issues and understand the impact and understand those conversations... If you're from a non-diverse community, if you don't have much interaction with diverse people, then your thirst to know more is likely, not always, but is likely to be less. The dynamic in this conversation, in this situation, is that those people from less diverse backgrounds, in less diverse communities, dealing with less diverse people, are the decision makers here.” (Marcus)

Marcus perceives that those with less experience with diversity and working with diverse communities are less likely to understand or be aware of the context behind the introduction of positive action initiatives such as the EFL's Recruitment Code, implying that they are thus less likely to support such a measure. Marcus appears to believe that this is particularly significant because, within the context of the EFL's Recruitment Code, those who are from non-diverse communities and/or have little experience of working with diverse communities are more likely to be decision makers. This relates to the impact that a lack of diversity amongst decision makers may have on the EFL's Recruitment Code, which is discussed further within Section 8.4 below. It also again supports the emerging perception within this research that there is a need for greater education and training as to why positive action initiatives are needed. This was echoed by Alex, who stated:

“I think the only way that this can properly work is that it is fully embraced and understood and acknowledged by the clubs and by the people enforcing this. If they are educated about this and they understand why it's important and the inequalities that exist, then they're more likely to embrace it and stick to it, erm, so it's a case of educating the people who are trying to uphold this” (Alex)

The view that the Recruitment Code will only be successful if decision makers clearly understand why the Code is needed and the context behind its introduction supports the perception that at present there is limited understanding and appreciation as to why the EFL's Recruitment Code has been introduced. Further, Alex's view that decision makers are more likely to follow the Recruitment Code if they understand the context aligns with Manfredi's (2017) view that the "cycle of disadvantage" must be understood (p. 6) and with the EHRC (2019) finding that employers' lack of understanding often limits the use of positive action.

Alice, an Academic Researcher in law, discussed this further:

"The rationale, the reason behind introducing them has to be well explained. People have to understand why this is necessary and I think as much as that's quite a difficult thing to do, I think it's something that has to be done well, because unless people understand the reasons behind it, why we're trying to address underrepresentation, why doing it this way is necessary, why it's not the case that just by leaving it to chance hasn't worked... people generally tend to be hostile towards things they don't understand or they don't see the relevance of and that's what needs to be done, it needs to be relevant, it needs to be explained, so that people are less hostile and they can see the point of it" (Alice)

Alice argues that it is important to articulate clearly to stakeholders why it is necessary to address underrepresentation in this way, i.e., with the Recruitment Code. In addition to supporting the emerging perception that a greater understanding of the context behind the introduction of positive action initiatives is needed, this suggests that Alice believes that it must be clearly explained as to why the EFL's Recruitment Code in the format in which it was introduced is necessary, as well as how this Code specifically will address the barriers that BAME managers and coaches face. Alice believes that participants need to "see the relevance" of the measure, which will thus reduce any hostility, again supporting the emerging perception that a greater

understanding of the EFL's Recruitment Code will lead to greater buy-in and support for the measure.

The need for the EFL's Recruitment Code specifically to be understood was also discussed by Harry:

"it's important for all to acknowledge that this is about access to opportunity for BME coaches, not giving anyone a free ride to a job, the coaches must be of the required standard to apply for roles anyway"
(Harry)

This view that it needs to be made clear that coaches must be of the required standard suggests that Harry believes that it is important that stakeholders understand that this measure still requires a consideration of merit. This may be because, as seen as an emerging theme from within this thesis, and within literature on positive action generally, positive action is often conflated with positive discrimination (YWT, 2018, p. 20), which has very little support. Harry appears to believe that ensuring decision makers understand that the Recruitment Code is more closely aligned with the concept of positive action than positive discrimination is key to gaining greater support for the measure. A similar implication was also found with the YWT (2018) research, which called for "clear and consistent guidance" on positive action (p. 82).

Michelle, a HR Practitioner at a professional football club, discussed why it is important to have buy-in for positive action measures:

"I've been in HR for a quite a number of years now and there's times when you've tried to do that and it's not worked and you see the impact that that does. If you don't get buy-in then it actually makes that process, it's flawed really because really you're doing something merrily yourself and nobody really understood it, so the understanding is absolutely critical" (Michelle)

Michelle suggests that understanding behind a measure is critical for the success of a measure, because without buy-in and understanding, the process is “*flawed*”. This suggests that implementing a measure that does not have widespread support may be more of a detriment than a benefit and that a suggestion for adaptation of the Code is to increase the level of buy-in. A similar view was expressed by Malcom:

“you want to work with them to encourage them, you want them to see benefits of doing something the right way is the best way and you've got to help them to see that and it may take a longer time to get them round to that, but ultimately it should be of lasting benefit. Whereas if you force them, they may do something reluctantly. You know yeah they'll say ‘OK, you forced us, we're going to interview a person, but we'll never appoint them because we're only required to give them an interview, not to appoint them’” (Malcolm)

Malcom believes that it is important to work with stakeholders and decision makers to help them to recognise the benefits of doing things in this way. The notion that forcing people to do something reluctantly may lead to them interviewing a candidate but never appointing them suggests that introducing a measure without buy-in and understanding of its importance may lead to decision makers following the letter of the Recruitment Code, but not its spirit. This supports the above perception that enforcing a measure without appropriate support may actually do more harm than good to the process of addressing underrepresentation.

As outlined, the need for greater understanding, which would lead to greater buy-in, was identified by participants as vital to the success of the Recruitment Code. With regards to how this can be achieved, Richard stated:

I think if you've got a good, interesting training programme that can explain it, done in a... way that... is interesting and well researched, and well understood and uses all tools to communicate key messages, rather than just saying ‘look this is why we are doing it, this is a technical

definition of it, have a read of these papers', that doesn't work. So I am a real strong believer in the training of key people... if you get their buy in, like anything, then that's worth its weight in gold because then that filters down to others who will equally, when challenged if they're responsible for it in a club, can say 'well no look this is why we are doing it' rather than 'no we've got to do because so and so has told us we've got to'" (Richard)

This suggests that the way to achieve greater buy-in for the Recruitment Code is about approaching the right people in the right way. Richard believes that a training programme that goes beyond technical definitions and suggested reading but is instead engaging and context specific will have a significant impact on the extent to which this measure is supported. He believes that the latter approach will assist with achieving buy-in from key individuals, which can trickle down to others within clubs. Arguably this will also help to overcome a key issue with positive action generally, in that it is often not well understood. As above, this aligns with a key implication from the YWT (2018) research, which called for clear guidance and promotion of positive action and the way in which it can work to address underrepresentation.

8.4 Holistic Approach Needed

One of the key themes emerging from this research in terms of the potential success of the EFL's Recruitment Code is the idea that this Code will not work in isolation and instead a more holistic approach is needed. This view was expressed by participants with differing levels of involvement with football. Martin, a focus group participant, stated:

"I think it's going to take... more than one rule or initiative. It's going to take like a collective thing and if you try a couple of things and they don't work out, fair enough but I think it's gonna take, like, a long time and it needs to be, like, a gradual process" (Martin)

Martin suggests that the EFL's Recruitment Code will not be successful on its own. He further expanded on what he thinks should be the focus of further initiatives:

"I think before introducing anything else like this you need to like tackle like, racism as whole, rather than... Because I think if you tried like increasing the number of Black, like, coaches, now while racism is still really prevalent in football, it would just probably have a negative effect"
(Martin)

Martin recognises racism as prevalent in the sport, and as such, feels that introducing measures that aim to increase the number of BAME coaches may have a negative effect. Instead, it appears that Martin feels that initiatives should be introduced that focus on tackling racism within the game, before introducing recruitment initiatives that focus on increasing the number of BAME managers and coaches. This may be supported by the SPTT (2015) report, which identified "experiences of racism" as a "key constraining factor" to the progression of BAME coaches (p. 15), suggesting that there is still a need to tackle racism within the game in order to increase the number of BAME managers and coaches. However, the notion that racism within the game needs to be eradicated before working on increasing the proportion of Black coaches has been challenged. In 2015, Port Vale chairman Norman Smurthwaite stated that he did not appoint Jimmy Floyd Hasselbaink as manager in 2013 "because of the racial issue the club had got" stating that he "didn't think it was fair on him... getting abuse, along with the normal abuse if results were going against him" (Press Association, 2015, paras. 3-4). This statement was heavily criticised, with then-chair of Kick It Out Lord Ouseley describing the decision as "outrageous that we have an owner admitting he wanted to protect a manager because of the possibility of abuse", asking "Are black managers not capable of protecting themselves?" (Press Association, 2015). This suggests that whilst there is a need to continue to introduce measures aimed at eradicating racism within football, this does not necessarily need to be done before introducing other measures like the EFL's Recruitment

Code, nor at the expense of initiatives that can assist BAME managers and coaches with gaining employment opportunities.

Whilst Martin felt that racism within the game generally should be tackled before introducing positive action initiatives such as the EFL's Recruitment Code, ten participants felt that such measures should be introduced alongside each other, as part of a holistic approach to progressing racial equality. For example, Craig said:

"I think it's positive and it's a step, but I don't think on its own it's the right way to do it... I think any rules like this have to work alongside another programme where people can see that there is a natural progression route regardless of your sex or the colour of your skin... It's a small step forward but, as I say, on its own I don't think it will work, I think it has to be in conjunction with something else" (Craig)

This further adds to the perception emerging from within this research that whilst the EFL's Recruitment Code may be a positive step, many participants felt that it will not achieve success on its own. This is supported by Bradbury (2013), who argues that whilst positive action initiatives within football coaching offer a way to address underrepresentation "the implementation and success of [positive action] approaches is likely to be greatly enhanced if it is delivered as part of a more holistic package of education, policy orientated and legislative action" (p. 311). The importance of positive action initiatives being implemented as part of a holistic approach to addressing underrepresentation has also been identified within research into positive action initiatives generally, which found that "isolated positive action initiatives were ineffective and needed to be part of a holistic life cycle approach" (YWT, 2018, p. 76). The holistic approach, consisting of measures beyond the legal framework, is also supported by the CRT perspective "that the law cannot, in itself, resolve the problem of racism in society or the consequences of it" (Gardiner and Welch, 2011, p. 234). This supports Craig's view that the EFL's Recruitment Code has to be introduced alongside other measures.

With regard to what activities or initiatives should fall within this holistic approach, Chloe outlined what she feels should be priorities:

“it's not just about the rules, it's about trying to change the culture generally within some of these organisations, and if you're just focusing on coaches then other areas are not being addressed or other issues around equality in sport, in football, are not being addressed. It kind of comes as a package, you can't just deal with one issue in isolation, you've got to have people at the top of the organisation who are really committed to equality and actually really bringing about positive change, because if you don't have that and there's no one driving that forward, again you can have all of the most wonderful policies and the most wonderful bits of paper with the greatest equality, the most brilliant positive action initiatives and they won't work, so you have to have that whole package” (Chloe)

Chloe's view that you need to have the “whole package” again supports the argument that there is a need for “a more holistic package” (Bradbury, 2013, p. 311) or a “holistic life cycle approach (YWT, 2018, p. 76), as she argues that considering issues around the underrepresentation of BAME coaches in isolation means that other equality issues are ignored. In particular, Chloe appears to suggest that a key focus should also be on ensuring the leaders in the organisation are committed to equality and focused on addressing issues of inequality to bring about positive change. Linking this, one of the key emerging themes on what should be considered as part of a holistic package of measures is the make-up of interview panels. Ashleigh stated:

“I think my main criticism of any kind of positive action like this, just at the recruitment level for managers, is that, realistically, going for an interview, they're always going to be faced with an interview panel that is not diverse. So, first of all, how can the panel then make sure that they're not being overrun by their own biases or how can they understand, sort of like, the perspective or the work that this coach has had to go through who is interviewing? Second of all, how would you

feel if that manager who is going to a panel and... they can't see themselves in that panel, how are they then going to perform? Because I think generally, people know that if you've got a diverse recruitment panel, that diverse candidates do better in those interviews and feel more comfortable" (Ashleigh)

Ashleigh clearly believes that even if the EFL's Recruitment Code is followed and a BAME manager or coach is interviewed for a position, the interviewees will still be faced with a non-diverse interview panel. This is supported by research by the SPTT (2015) which found that "Less than 1% of all senior governance and senior administration positions at governing bodies and professional clubs in England are held by staff from BME backgrounds" (p. 6). Ashleigh argues that this will negatively affect BAME applicants who do not see themselves in the interview panel, as the panel may not be able to see past their own unconscious biases. This is supported by research by the SPTT (2015) who found "tendencies of key power brokers at clubs... to hold a series of physical and cultural stereotypes about BAME players and coaches" (p. 17), which demonstrates why a positive action measure that focuses on BAME managers and coaches securing interviews will not work in isolation if key decision makers hold a series of stereotypes about such coaches. This aligns with Chloe's view on the need for unconscious bias training:

"if you don't have unconscious bias training for people who are recruiting then you are still going to have a problem. You might have somebody... who has got to the final stages but because of issues around unconscious bias, the white coach is appointed not the Black coach. So, how are you going to address that within your recruitment panels, within your recruitment processes? Something else has to be done, has to be acknowledged, in order for these to work" (Chloe)

The perception that unconscious bias training is needed alongside the introduction of the EFL's Recruitment Code aligns with the view outlined by Ashleigh. The views of these participants appear to align with Bradbury's (2013) view that a holistic approach "might in the first instance include a strong

emphasis on developing and delivering an industry standard programme of cultural awareness and anti-discrimination training which specifically targets senior administrators, directors and executive committee members” (p. 314). The need for unconscious bias training also links with the view expressed by Chloe, on the need to have leaders who are committed to “*positive change*”.

In addition to Chloe and Ashleigh’s views, Ian discussed the stage before the interview process, arguing for the need to make full recruitment processes mandatory:

“if they really do want to try and get more BAME candidates then maybe a full recruitment process would be best, because if the issue is that they are not approaching people from a BAME background without a requirement to do so then... not having a full recruitment process means that they’re probably not going to try and headhunt someone from that background” (Ian)

The argument for a full recruitment process was supported by Ashleigh who felt that a regulation should be introduced to ensure full recruitment processes are carried out:

“I think there needs to be, sort of a, another regulation which states that you need to have proper recruitment practices” (Ashleigh)

As outlined in Chapter Four, a key barrier to BAME manager and coach career progression is the lack of formal recruitment processes, with many clubs relying on networks-based methods of recruitment which often exclude BAME managers and coaches. This has also been identified as a key barrier by the SPTT (2015). This means that, whilst the Code applies in instances where a club “operates a recruitment process (which... involves any process of shortlisting of candidates and the interviewing of more than one candidate)” (EFL, n.d., para 116.1.1), there is no requirement for clubs to actually run a recruitment process for first-team positions. As such, the EFL’s Recruitment Code may be limited in the frequency at which it actually operates, and thus it

may do little to assist BAME managers and coaches in overcoming the barriers that they face in terms of gaining an interview. In order to overcome this issue, the above participants appear to suggest that a regulation should be introduced alongside the EFL's Code requiring full recruitment processes. This would help to avoid the over-reliance on networks-based methods of recruitment and would mean that the EFL's Code would apply in most circumstances.

Whilst in favour of such a rule, Ashleigh also outlined a potential difficulty with this:

"I think the short turnaround time to try and find managers doesn't help with that process either. Erm so if it's obviously during the season you're looking to get a manager straight away, you've already got an idea of... who you wanna get, of who you wanna target, which doesn't help making sure the best people are coming across the opportunity"
(Ashleigh)

This suggests that introducing a regulation which requires a full recruitment process during the season will be difficult because of the speed in which a new manager is needed to be found. Because of the frequency of matches during the season, clubs generally wish to appoint a manager as soon as possible, which may mean that a full recruitment process is not run. This most likely perpetuates the barriers for BAME managers and coaches; however, it may also be difficult to encourage clubs to vote for such a regulation. As such, this may link back to ensuring that clubs understand the importance of the EFL's Recruitment Code and ensuring that clubs have leaders and decision makers who are passionate about advancing inclusion.

Linking to the perception that addressing underrepresentation requires a holistic approach, a further theme emerging from this research is that the barriers to BAME manager and coach progression are perceived to be a whole game problem. As such, the EFL's Recruitment Code, which only operates within three of the professional leagues, will be insufficient to address the

barriers that BAME managers and coaches face within football as a whole. Some participants argued that there should be an equal focus on grassroots football:

“I think it’s got to start from grassroots more. Get more coaches in at a lower end and then as they develop their managerial talent, then let them naturally go onto bigger jobs” (Joe)

The perception that more coaches need to be recruited at the lower end of the football pyramid who can then progress to jobs higher up in the pyramid was echoed by Abdul, who argued in favour of a “bottom-up approach”:

“I think if you’re gonna apply a rule like this at the top level, why not apply it the whole way down? You know it’s almost saying that ‘alright the Football League and the Premier League is professionalised but at grassroots level, do what you want’... I don’t really understand that because, I always believe in a bottom-up approach... So, if something like this isn’t, sort of, applied at grassroots and the lower end of football, then it’s almost as if, OK well, you’re only talking about the elite anyway... I think football as a whole should look at this as an issue, because it is an issue. And say what are we doing about it, together?... if football came together, the FA, the Premier League, Football League, non-League and said look this is best practice, this is what we should be doing.” (Abdul)

Abdul argues that only applying the Recruitment Code to professional football implies that at grassroots level, decision makers do not have to follow best practice. He believes that the underrepresentation of BAME managers and coaches is an issue across all of football and therefore football should come together as a whole to share best practice. He advocates for a “bottom-up approach”, which aligns with Joe’s view that the focus should start at grassroots. This supports the need for a holistic life cycle approach, and Bradbury (2013) argues that positive action initiatives are likely to be more successful “if delivered as part of a more holistic approach” (p. 311).

Whilst these participants are in favour of this “bottom-up approach”, others instead favour a “trickle down” approach:

“You would like to see it at the elite level and at grassroots level, er, but with all things there are financial constraints and to try and tackle it at both professional and grassroots I think would be quite difficult to do that at the same time. So, if you had to choose, I would probably say trying to tackle it from the elite level down is probably the best approach. Because if you tackle it at the elite level then you will start to see change, and that change will be seen by the wider football population”
(Ian)

Ian perceives that it would be too difficult to try and tackle underrepresentation both within the professional game and at grassroots at the same time. As such, he argues that focusing on the elite level is the correct approach, as once change is seen at this level, similar approaches may be adopted further down the pyramid. However, Chloe discussed the potential limitations of this approach

“I suppose that's the theory that it will trickle down to grassroots. I'm not sure in practice it will. I mean... the FA nationally has been quite clear in terms of the expectations around equality and what [local FAs] should be doing in terms of equality and having their equality standards and meeting at least the basic equality standards, but I think some FAs are still having difficulty with that, and if they're having difficulty with implementing some of the really basic stuff, then they're going to have difficulty with implementing, you know [something] voluntarily... unless it becomes something that they are strongly encouraged if not forced to do... I think there has to be a little bit more pressure and it has to also start with the grassroots because you're getting people through that system... and there has to be a message sent to grassroots as well as higher up in football leagues” (Chloe)

Chloe appears to believe that focusing on increasing representation of BAME managers and coaches at elite level, with the intention that this will trickle down to grassroots, is unlikely to be successful. She believes that at a grassroots level some clubs have difficulties implementing basic requirements in relation to equality and, as such, will likely have difficulties implementing the voluntary Code. Alex expressed similar views on the likelihood of success of such a Code at grassroots level:

“I don’t think the Rooney Rule can work at grassroots level. I think it would be almost impossible to enforce this, especially within grassroots clubs in amateur level, it just wouldn’t work” (Alex)

Philip offered an explanation as to why it would be difficult to implement such a measure at grassroots level:

“in a sense the beauty of the professional game on the one hand is it’s only 92 clubs so it’s pretty easy to, kind of, keep a handle on. Whereas the grassroots game is just, is just massive. I mean, you’ve got semi-professional clubs down to the good amateur clubs, down to bog-standard park clubs and they won’t have a coach at all, they’ll just have the dog coming along and watching so it’s hard to generalise about the issue” (Philip)

Philip highlights the logistical challenges involved with implementing the same measure throughout all levels of the football pyramid, due to the differing resources available and the differing levels of professionalism within the grassroots game. In light of this, he suggests that positive action within grassroots football should have a different focus:

“I think that in a sense, positive action for the grassroots game would be for me would be better targeted towards the governance of the game, so the people who make up county FAs are still overwhelmingly white and they still attain very strong influence and power on the grassroots game in terms of how funding’s allocated, handling discrimination

cases, y'know those types of things, and there is definitely a place for positive action within the way in which the grassroots game is governed"
(Philip)

Philip appears to suggest that the focus at grassroots level should be on diversity amongst county FAs and decision makers, rather than on a Recruitment Code that focuses on coaching. There exists a significant body of research into equality, diversity and inclusion at grassroots football (see *inter alia* Bradbury, 2011; Lusted, 2009 & 2010; Oliver & Lusted, 2015; Kilvington & Price, 2013) and an in-depth consideration of these issues is beyond the scope of this thesis. However, this supports the emerging perception that the lack of underrepresentation can be considered a whole game problem and thus a holistic approach, rather than an approach focusing on one rule or initiative, is needed.

8.5 Conclusion

As there was an emerging perception in this thesis that the EFL's Recruitment Code is flawed as a form of positive action aimed at addressing racial disadvantage within English professional football coaching, many participants suggested ways in which they felt the effectiveness of the EFL's Recruitment Code could be increased. These suggestions would also assist in ensuring the Recruitment Code becomes a performative action under CRT (Hylton, 2010). The first method focused on the introduction of sanctions for non-compliance, which has also been discussed by McGurk et al. (2019), who argue that the EFL should "propose, agree and implement a system of sanctions for contravention" (p. 38). Whilst two participants discussed fines, others felt financial penalties would disproportionately impact some clubs over others and instead argued in favour of points deductions. However, some participants were concerned about the implications of a points deduction on the treatment of BAME players and coaches. The second way in which participants felt the effectiveness of the EFL's Recruitment Code could be improved is by ensuring buy-in and understanding of the Code, namely that decision makers understand why the Recruitment Code is needed and its scope and limits. This

is supported by Manfredi (2017) who argues that “the cycle of disadvantage” needs to be understood in order for positive action measures to be supported (p. 6).

Participants felt that there could be greater success by introducing the EFL’s Recruitment Code in conjunction with other measures, as most participants felt that the Code would have limited success in isolation. This is supported by Bradbury’s (2013) argument that “the implementation and success of [positive action approaches] is likely to be greatly enhanced if delivered as part of a more holistic package” (p. 311). This is also supported by research into positive action more generally, which found that “isolated positive action initiatives were ineffective and needed to be part of a holistic life cycle approach” (YWT, 2018, p. 76). Participants further perceived that a change in culture is needed, calling for more diversity amongst decision-makers, as well as leaders that value and drive inclusion within their clubs. This aligns with research by the SPTT (2015), who found that “Less than 1% of all senior governance and senior administration positions at governing bodies and professional clubs in England are held by staff from BME backgrounds” (p. 6). This links with the need for more racially diverse interview panels and training for interview panel members. In addition to this, some participants highlighted the fact that whilst the EFL’s Code applies in instances where full recruitment processes are done, there is no formal requirement for such processes to be carried out. As such, some participants called for a regulation requiring full recruitment processes in every instance. This holistic life cycle approach would also assist with the CRT perspective that the law alone cannot resolve the consequences of racism, but other measures are required too (Gardiner and Welch, 2011). A final emerging theme was the perception that whilst the Recruitment Code applies only to the three leagues within the EFL, the underrepresentation of BAME managers and coaches is a key issue throughout the football pyramid. Whilst some participants called for a similar rule to be introduced at grassroots level, others felt that this would be logistically impossible and instead argued that measures would be better targeted at the governance of the game.

This Chapter has outlined ways in which research participants believe that the EFL's Recruitment Code can become a more effective form of positive action. Outlining participants' perceptions in this regard is particularly important in light of the reflexive approach taken within this research which seeks to reflect the voices of research participants (Bourke, 2014). These suggestions, along with the legal analysis in Chapter Seven, have informed the development of the implications and pointers for action at Micro, Meso and Macro Levels outlined in the following Chapter.

Chapter Nine

Implications and Pointers for Action

9.1 Introduction

This research has explored stakeholder perceptions of the barriers that BAME managers and coaches face, the use of positive action generally and the EFL's Recruitment Code as a form of positive action. It particularly explored the extent to which participants felt that the EFL's Recruitment Code would be successful in achieving its aim of increasing the representation of BAME managers and coaches. The overriding theme from participants' discussions on the EFL's Recruitment Code is that the Code does have the potential to be successful if adapted to be implemented effectively as part of a holistic package of measures aimed at addressing racial inequality within football, but at present is a fairly flawed form of positive action. As seen in Chapter Eight, many participants outlined suggestions on ways in which the success of the EFL's Recruitment Code could be increased. Further, one of the key objectives of this research is to identify ways in which the EFL's Recruitment Code, and positive action generally, can become a more effective means of addressing underrepresentation. This Chapter thus builds on participants' perceptions and the legal analysis to meet this objective by detailing the implications emerging from this research, as well as suggesting a series of pointers for action. This further addresses the research question on the lessons that can be learnt from the introduction of the EFL's Recruitment Code as a form of positive action for English football, sport in England generally, and beyond. Due to the emerging perception of a need for a holistic approach, the implications and pointers for action within this Chapter are split into Micro (Club), Meso (Sector) and Macro (National Policy) Levels.

9.2 Micro (Club) Level

In this context, 'Micro' Level refers to the implications for individual football clubs within the EFL. The pointers for action detail suggested steps that

individual clubs can take to increase the likelihood of success of the EFL's Recruitment Code in increasing representation of BAME managers and coaches.

9.2.1 Understanding

One of the key themes relating to the EFL's Recruitment Code, which will also be discussed within the Meso and Macro Levels below, is that there is a perceived lack of understanding of positive action and, as a result, the Code. Participants that work within EDI felt that generally people do not understand positive action initiatives and this lack of understanding was evident in the views expressed by some of the participants within this research that are less directly involved with EDI. Participants felt that this lack of understanding is likely to extend to those working within EFL clubs and, because of this perceived lack of understanding, many participants felt that the Recruitment Code would not be implemented effectively. Because of this lack of understanding of positive action, football clubs should take action to increase awareness in this regard.

Pointer for Action 1: Clubs should engage with education provided by the EFL on both positive action and the Recruitment Code (detailed within Section 9.3.2 Pointer for Action 3), to ensure a sound level of understanding throughout their club and amongst those taking part in the recruitment process.

Pointer for Action 2: Clubs should assist with the communication of the Recruitment Code to fans, by supporting the EFL's suggested communication plan detailed below.

Pointer for Action 3: Many clubs provide education on equality, diversity and inclusion as part of community trust and academy programmes. Clubs should help to improve understanding of positive action by including the topic within these existing programmes. This should detail the context behind positive action, why it is necessary, how it operates and how it is distinguished from measures more closely aligned with positive discrimination. Embedding this within existing training should result in minimal cost implications.

9.2.2 Implementation

A further key theme that emerged from this research was a clear perception amongst participants that clubs would fail to implement the Recruitment Code consistently and effectively. For academy positions, the Code requires clubs to publicly advertise the vacancy for at least seven days and, where an application is received from “any Minority Candidates(s), invite one or more Minority Candidate(s) to interview” if they are suitably qualified (EFL, n.d. para. 115.1.3). The Rule for first-team positions, however, only applies in instances where a club shortlists candidates and interviews more than one candidate (EFL, n.d.) and thus clubs can still recruit through pre-established networks without the need to interview at all. Whilst the Recruitment Code was in a different format during the interview stage of this research, most participants felt that clubs would exploit any permitted exceptions to the Recruitment Code, viewing them as a loophole and means of avoiding following the Code on most occasions. If the Code is not followed on most occasions, this would thus mean that it would likely have little positive impact on the representation of BAME managers and coaches. As such, clubs should ensure that the Recruitment Code is followed on every occasion.

Pointer for Action 1: Clubs should ensure effective implementation of the Recruitment Code throughout their organisations by not exploiting potential loopholes in the Code and instead committing to run full recruitment processes for both management and coaching vacancies and at first team and academy levels, accepting that the extra time and potential cost that this will take is necessary to increase representation. This will further support with compliance with the FA's Football Leadership Diversity Code, which also focuses on increasing diversity amongst professional football coaches.

Pointer for Action 2: The EFL Equality Code of Practice requires clubs to complete an annual State of Play survey for staff, coaches, match day staff and Board members (EFL, n.d.). In order to evaluate where barriers to BAME progression may be arising, clubs should extend this further by also monitoring equality data in recruitment, namely of applicants, shortlists and appointments, in order to determine whether BAME candidates are applying for roles but not being shortlisted or appointed, or whether there is a lack of BAME applicants. Clubs should commit to reviewing this recruitment equality data, alongside the State of Play survey data, periodically; for example, every six months. Many clubs have HR and/or recruitment systems to monitor this data; however, some clubs, with fewer resources, may not have such systems in place. The implementation of sophisticated systems would have key cost implications; however, there are ways to collate this data with minimal cost, such as through free anonymous survey platforms.

Pointer for Action 3: Clubs should commit to reviewing their approach to the EFL's Recruitment Code in light of the equality monitoring data collected above and to making adjustments as needed, such as exploring ways to attract more BAME applicants and/or further training for those on recruitment panels.

9.2.3 Environment

A key theme that emerged throughout this research on the effectiveness of the Recruitment Code relates to stereotypes held by decision makers at clubs. Many participants felt that decision makers at clubs hold racial stereotypes on BAME managers and coaches, namely that they are not good enough or not capable of managing and coaching at the elite level. This is supported by the SPTT research (2014), which found “physical and cultural stereotypes about BME [sic] players and coaches” held by “key power brokers at clubs” to be a key constraining factor to BAME coach progression (p. 17). Linking to this, there was also a perception that BAME managers and coaches are held to higher standards than their white counterparts, with many stating that they have to be twice as good in order to obtain and maintain a position. This is particularly noteworthy in light of the EFL’s Recruitment Code. The Code requires clubs to interview BAME candidates, but many participants within this research felt that this would have little impact on the career progression of BAME managers and coaches if decision makers still hold stereotypes about them and they are expected to reach and maintain higher standards than their white counterparts. In addition to this, some participants pointed to the lack of diversity amongst decision makers at clubs as a further barrier to BAME manager and coach progression. One participant within this research felt that this would negatively impact the performance of BAME managers and coaches at interview, when faced with an interview panel within which they could not see themselves. This is supported by the SPTT (2015), which found that “Less than 1% of all senior governance and senior administration positions are held by staff from BME [sic] backgrounds” (p. 6). Many participants also discussed the need for senior level buy-in and commitment to diversity and inclusion in order to create an inclusive culture at clubs. Due to the role that senior decision makers play in the appointment of managers and coaches, it is crucial that such decision makers buy in to the EFLs’ Recruitment Code and clubs create the necessary environment to enable the Code to be implemented effectively throughout their clubs. Without this level of support, it is unlikely that the Recruitment Code will succeed.

Pointer for Action 1: Clubs should create an environment which enables the Recruitment Code to succeed, ensuring visible senior commitment through appointing an Executive Sponsor with responsibility for the effective implementation of the Recruitment Code. The EFL's Code of Practice requires a senior member of staff to be nominated to lead on EDI (EFL, n.d.) and this nominated person could also be responsible for the effective implementation of the Recruitment Code.

Pointer for Action 2: In order for the Recruitment Code to be effective, clubs should work to increase the racial diversity amongst senior decision makers more broadly, through placements, training and development opportunities. Whilst training and paid placements may require financial investment, initiatives such as work shadowing for existing staff and community-specific recruitment drives can be achieved with minimal cost. Further, the provision of development opportunities is also required as part of the FA's Football Leadership Diversity Code, and this would thus further assist with the development of a holistic approach to addressing underrepresentation. Greater diversity in this regard would help to increase the success of the Code, if BAME applicants selected for interview through the Code are faced with a more racially diverse interview panel.

Pointer for Action 3: As the Recruitment Code concerns interviewing suitably qualified BAME candidates, clubs should provide anti-racism training to interview panels and those involved in recruitment. Where clubs currently have all-white interview panels, they should provide further training to those panels on the history of racial inequalities and the impact that an all-white panel may have on a BAME applicant at interview. Clubs should also utilise the provision of assistance with diverse interview panels suggested by the FA as part of the FA Leadership Diversity Code and as outlined within Section 9.3.1 Pointer for Action 2 below. This will help to increase the success of the Code in increasing the number of BAME managers and coaches recruited to positions and using the FA's assistance will keep costs to a minimum.

9.3 Meso (Sector) Level

In this context, 'Meso' and 'Sector Level' refer to the EFL as a governing body. The pointers for action detail steps that the EFL can take to increase the effectiveness of the Recruitment Code that they have implemented.

9.3.1 Recruitment Practices

One of the key themes that emerged from this research was the impact that recruitment practices within football have on BAME managers and coaches. Many participants within this research perceived most management and coaching positions at senior level to be recruited through networks-based methods of recruitment and that these recruitment methods disproportionately impact BAME managers and coaches. It was perceived that that these pre-established networks are relied upon to secure candidates but that BAME managers and coaches are not given the opportunity to break into these networks. This aligns with the Catch-22 identified by Collins (2007) on the experiences of African American coaches in the NFL. In addition to this, participants also discussed the role that the EFL's Recruitment Code may have in overcoming this barrier. For academy positions, as outlined above, the Code requires clubs to publicly advertise the vacancy for at least seven days and, where an application is received from "any Minority Candidates(s), invite one or more Minority Candidate(s) to interview" if they are suitable qualified (EFL, n.d., para. 115.1.3). The Rule for first-team positions, however, only applies in instances where a club shortlists candidates and interviews more than one candidate (EFL, n.d.), thus clubs can still recruit through pre-established networks without the need to interview. Whilst the Code was in a different format during this research process, as outlined above, most participants felt that the Code not requiring a full recruitment process would be a loophole for clubs, resulting in it not regularly being applied. Thus, this would do little to dismantle the barriers that BAME managers and coaches face at first-team level. As such, the EFL should introduce measures to help ensure that the Recruitment Code is followed as often as possible.

Pointer for Action 1: The EFL should introduce a regulation requiring clubs to operate a full recruitment process in all circumstances, extending the current requirements at academy level to first-team level and encouraging them to see that the extra time and potential cost this would take is necessary to increase representation. This would also help to overcome the implication detailed within Section 9.2.2 and support the pointer for action that outlines the need for clubs to follow the Recruitment Code in every instance.

Pointer for Action 2: As with the FA Leadership Diversity Code, the EFL should help clubs to ensure they have diverse interview panels by providing panel members where possible. The EFL should create a register of accredited and trained panel members who can be used for this, and this register should include BAME former professional footballers. Whilst training interview panel members for this may require some financial investment from the EFL, this would help to increase the likelihood of success of the Recruitment Code and, further, would provide development opportunities for those panel members.

9.3.2 Understanding and Transparency

One of the main themes that emerged from this research is that positive action, and therefore the EFL's Recruitment Code, is not well understood. The implications of the lack of understanding of positive action generally is discussed at Micro Level above and Macro Level below. However, many participants discussed an apparent lack of understanding of the Recruitment Code amongst the general public, with many believing that it requires a BAME coach to be interviewed and/or appointed without any consideration of merit. In addition to this, a further key theme was the lack of transparency regarding the consultation and drafting process. Many participants felt that the Code had been introduced out of nowhere, with little detail on who was consulted and, particularly, the extent to which BAME managers and coaches were engaged with the process. This left some participants to question the extent to which the Code is supported by BAME managers and coaches and this then impacted on their own level of support. Furthermore, the lack of a solid, transparent, evidence base impacts on the extent to which a positive action

measure may be considered proportionate within the legal framework. Consultation with underrepresented groups is also a key requirement of successful reflexive regulation (Fredman, 2012). As such, the EFL should provide further detail on the evidence base used to inform the development of the EFL's Recruitment Code.

Pointer for Action 1: The EFL should provide greater transparency on the Code, including the evidence base and consultation behind its introduction.

Pointer for Action 2: The EFL should publicise anonymised information on individuals and groups that were consulted, their findings and how this influenced the development of the Recruitment Code. This could be done retrospectively and/or in advance of any amendments to the Code.

Pointer for Action 3: The EFL should publish clear guidance on the Recruitment Code, including a user-friendly guidance document for Clubs which outlines the scope of the Code and key examples of best practice. This should be supported by in-person training for individuals involved in recruitment at club level, supporting the pointer for action at Micro Level detailed within Section 9.2.3, which outlines the need for training for interview panel members. The guidance and training could be embedded into the existing Equality Code of Practice process to keep additional costs to a minimum.

Pointer for Action 4: Whilst the EFL has dedicated equality campaigns, such as "Not Today or Any Day" which focus on tackling discrimination within football more generally (EFL, n.d.), there is currently no awareness campaign based on the Recruitment Code. As such, for fans, the EFL should introduce a communications campaign on the Recruitment Code, detailing how it operates, its scope and its limits. This campaign should include adverts in matchday programmes, posters on stadiums concourses and adverts on television (particularly during matches); the EFL could use the communication surrounding the introduction of Video Assistant Referees (VAR) in the Premier

League at the start of the 2019/20 season as a template for this, which included short videos from high-profile individuals in the game.

9.3.3 Implementation of Voluntary Code

There was an overriding perception within this research that the Voluntary Code for first-team football would not be successful. Most participants felt that asking clubs to follow the Code on a voluntary basis meant that it would not be followed in many instances. As such, many participants felt that there should be sanctions introduced for non-compliance. Whilst this may be the prevailing view of many participants in this research, and amongst academic commentators (see *inter alia* McGurk et al., 2019), the legal analysis within Chapter Seven suggests that the introduction of sanctions may create a blanket policy and take the Recruitment Code outside of the scope of what is permitted under the Equality Act 2010. Furthermore, many participants felt that currently there is insufficient transparency on the extent to which clubs are following the Code, which enables clubs to avoid following the Code without fear of criticism or backlash. This lack of transparency is also a key limiting factor on the success of the measure as a form of reflexive regulation, as required by Hepple's (2011) three interlocking mechanisms and discussed in further detail in Chapter Seven. In light of participants' perceptions and the legal analysis, the EFL should take action to increase transparency and encourage adherence to the Voluntary Code.

Pointer for Action 1: The EFL should provide greater transparency on the extent to which the Recruitment Code is followed by all 72 clubs, using an external agency to monitor this data and publish periodically.

Pointer for Action 2: The EFL should introduce awards or kitemarks for clubs that consistently comply with the principles of the Recruitment Code, enabling them to publicly demonstrate their commitment to best practice. This could operate alongside, or be embedded within, the existing EFL Equality Code of Practice.

9.3.4 Holistic Life Cycle Approach

The final sector-level implication is the need for a holistic life cycle approach to addressing racial inequalities within football, of which positive action at coaching and management level would form one part. One of the key themes emerging from this research is that the EFL's Recruitment Code would not be successful in increasing the representation of BAME managers and coaches in professional football in isolation. Most participants felt that it would take more than one rule, initiative, programme or policy to make meaningful and sustainable change. This is because the barriers that BAME managers and coaches, and BAME people in football generally, face are numerous and interact with all areas of football; for example, a rule that requires clubs to interview a suitably qualified BAME applicant requires there to be at least one BAME applicant that has the required qualifications and, as discussed above, has access to recruitment networks and is able to perform in an interview where they might not see themselves represented in the interview panel. For such an applicant to be appointed, the interview panel must not have, or must be able to overcome, any preconceived conscious or subconscious racial stereotypes regarding BAME managers and coaches. As such, many participants felt that focusing solely on an interview scheme may have little impact in increasing the representation of BAME managers and coaches. Further, some participants felt that focusing on coaching and management in isolation may have some impact at that level but would be unlikely to address racial inequalities within football as a whole. As such, most participants instead argued that a holistic package of action to address underrepresentation and inequality throughout the life cycle of football is needed. This is supported by Bradbury (2013), who argues that "a more holistic package" is needed (p. 311)

and the YWT report which found that positive action should be part of a “holistic life cycle approach” (2018, p. 76). Because of this, the EFL should take a holistic life cycle approach to addressing the underrepresentation of BAME managers and coaches.

Pointer for Action 1: The EFL currently operates the Equality Code of Practice, which requires clubs to take action to embed EDI across their organisation. As such, the EFL should ensure that the Recruitment Code is one initiative which forms part of a range of measures aimed at addressing BAME underrepresentation in management and coaching positions across their leagues. This should include bursaries, placements and training and development opportunities for BAME coaches and work alongside the Equality Code of Practice.

Pointer for Action 2: The EFL should implement a holistic package of measures aimed at increasing BAME representation amongst head office, executive and director roles to increase diversity amongst decision makers.

9.4 Macro (Policy) Level

Within this thesis, ‘Macro’ Level refers to positive action beyond the EFL’s Recruitment Code, discussing implications for the use of positive action to address underrepresentation and disadvantage more generally. The pointers for action detailed below are steps that the Government and policy makers can take to increase both the use and effectiveness of positive action.

9.4.1 Understanding of Positive Action

As detailed throughout the Micro and Meso sections above, one of the overarching themes from this research is that there is a general lack of understanding of positive action extending beyond the football context. Participants within the present research that are EDI Practitioners or work closely with EDI matters perceived that generally people do not understand

the need for positive action or how it operates. This was seen through the views expressed by participants that do not work within EDI, such as the focus group participants. Because of this lack of understanding, people are less likely to engage with positive action due to confusion around its scope and what may be permitted under the Equality Act 2010. In addition to this, some participants felt that there is also a general lack of understanding as to why positive action is needed. This is supported by Manfredi's (2017) argument for a substantive model of equality, which includes breaking down "the cycle of disadvantage suffered by some groups" (p. 6). The lack of understanding of how positive action operates, its scope and why it is necessary further means that it is less likely to be used by employers as a tool to address underrepresentation. Because of this, the Government and policy makers should take action to increase awareness and understanding of positive action.

Pointer for Action 1: The Government Equalities Office (2011) has previously produced a "Quick Start Guide" and "Step-by-Step Practical Guide" to positive action. However, in light of the research findings, there is clear scope for more recent and more widely publicised guidance. As such, the Government and policy makers should produce updated clear written guidance on positive action, that is user-friendly, easily accessible and widely publicised. This should provide a clear definition of positive action, why it is necessary and list some key examples of what is and is not permitted. It should be publicised widely and directly shared with industry groups, regulatory bodies and other employer groups.

Pointer for Action 2: Written guidance should be further supported by training for employers provided by the Government, which could consist of free online training videos on positive action and how to effectively introduce positive action measures within organisations. Whilst the creation of training materials will have some cost, using online recorded training will help to keep this to a minimum.

9.4.2 Conceptual Confusion Surrounding Positive Action and Positive Discrimination

In addition to a general lack of understanding of positive action, many participants also discussed the perception that positive action is often conflated with positive discrimination. Many participants that are EDI Practitioners discussed their experiences that generally people do not understand the difference between positive action and positive discrimination, and that as soon as 'positive action' is mentioned, people have preconceived ideas as to what this will entail. These participants felt that people generally believe positive action and positive discrimination to be the same thing, and thus believe that such initiatives afford benefits to underrepresented groups, irrespective of merit. This is supported by EHRC research, which found that there is "conceptual confusion" around positive action and positive discrimination (EHRC, 2019, p. 33). This was illustrated by some of the responses by fan participants in this research who did not support such measures due the lack of consideration of merit. Because of this lack of understanding, people are less likely to engage with positive action initiatives because they conflate such initiatives with positive discrimination and thus believe that such initiatives afford benefits to underrepresented groups, irrespective of merit. As such, the Government and policy makers should take action to address this conceptual confusion.

Pointer for Action 1: Due to the similarities between the phrase 'positive action' which is lawful, and 'positive discrimination' which is not, and the confusion that often results, the Government should consider rephrasing the concept of 'positive action' to a term which instead highlights how such steps are means of 'levelling the playing field'.

9.4.3 Reflexive Regulation and the Specificity of Football

A further theme discussed by many participants within this research is the specificity of football. Participants discussed how football is unique in the way

that it operates, particularly with regards to informal rules and working conditions. Participants argued that football has been allowed to govern itself throughout its history and, as such, is resistant to outside interference. This links to the concept of the specificity of sport, a term used to refer to “the inherent characteristics of sport which set it apart from other economic and social activities” (European Commission, 2016, p. 3). This may show why previous regulatory approaches, based on command-and-control legislation, have had little impact on addressing underrepresentation of BAME managers and coaches. Because of this, the EFL’s introduction of a positive action initiative is particularly significant and may be an example of the legislative approach of reflexive regulation, which recognises the internal dynamics of subsystems, working effectively. This is particularly significant because it appears that the reflexive approach has been successful in encouraging action in a sector which has been particularly resistant to interference. However, a further implication emerging was that whilst reflexive regulation may have enabled the EFL to introduce a regulation that they felt was suited to their leagues, some of the key features identified by Hepple (2011) of successful reflexive regulation were missing, particularly transparency around consultation and the involvement of interest groups, as well as an external enforcement agency.

Pointer for Action 1: The Government should provide further publicity and guidance on reflexive regulation and the space that it gives organisations to develop their own solutions to problems they may face, utilising Hepple’s (2011) three interlocking mechanisms for effective regulation to produce a step-by-step guide to developing such measures.

Pointer for Action 2: The Government should review equality legislation more broadly to consider where a reflexive regulation approach can replace existing command-and-control approaches.

Pointer for Action 3: In light of the specificity afforded to football, the Government should encourage football organisations to further utilise positive action and reflexive regulation and to follow the requirements set out by Hepple (2011).

9.5 Conclusion

To conclude, the EFL's Recruitment Code is perceived to be a flawed form of positive action to address racial inequalities in its current form. Further, an additional key theme emerging from this research is the lack of understanding of both the EFL's Recruitment Code and positive action more generally. As such, key pointers for action at all levels focus on ways to increase understanding and awareness, as well as transparency regarding the introduction of the Code. At the Macro Level, this involves Government working to create greater awareness of both positive action and reflexive regulation, producing documents which support their use. As well as this, implications focused on the need to implement the Recruitment Code fully and effectively; at Micro Level, this means clubs ensuring that they follow the Code and not exploit any loopholes, and at Meso Level this means EFL acting to close potential loopholes. In addition to this, there is a need to ensure that a holistic approach to addressing underrepresentation is taken, with clubs working to create the right environment for the Recruitment Code to succeed and the EFL ensuring that the Code is one measure out of a programme of initiatives aimed at addressing underrepresentation and advancing inclusion across football as a whole.

Chapter Ten

Conclusion

10.1 Introduction

This Chapter draws together the research findings discussed throughout this thesis. It outlines how these findings relate to the research objectives detailed in Chapter Three. It then outlines the significance of the research findings for both football and the general implementation of positive action initiatives within England. The Chapter then suggests areas for future research building on the findings from this thesis. It concludes by arguing that the EFL's Recruitment Code is at present a fairly flawed form of positive action to address racial disadvantage within professional football coaching but if implemented effectively as part of a holistic package of measures, it could play a key role in addressing underrepresentation within English football and beyond.

10.2 Summary of Findings

In order to determine whether the EFL's Recruitment Code is an effective or flawed form of positive action to address racial disadvantage within professional football coaching, the following Research Objectives were identified:

1. Explore stakeholder perceptions of the experiences of Black, Asian and Minority Ethnic managers and coaches within English football
2. Consider stakeholder perceptions of the concept of positive action and its use in addressing underrepresentation
3. Evaluate whether the EFL's Recruitment Code is an effective and legal form of positive action and reflexive regulation in light of the British legal context

4. Identify ways in which the EFL's Recruitment Code and positive action can become more effective ways of addressing underrepresentation

Appendix H outlines how each Chapter of this thesis responds to the Research Objectives and answers the Research Questions in detail. As seen in Appendix H, Objective One was met in Chapter Four, which outlined participants' perceptions on the barriers that BAME managers and coaches face to career progression within English football. These barriers were identified as: being held to higher standards; extra pressure on BAME managers and coaches to perform; a lack of role models; the existence of racial stereotypes; the limited opportunities for BAME managers and coaches; the recruitment practices used, and the specificity of football. Objective Two was met in Chapter Five on perceptions of positive action, which found that all participants, except the Fan participants, supported positive action as a means of addressing disadvantage generally, but also expressed concerns that positive action is not widely supported or understood amongst the general population. This appeared to be demonstrated by the views of the Fan participants, who stated that they did not support positive action for reasons more closely aligned with positive discrimination. Ex-Professional Player and Coach participants, who are perhaps more likely to be the beneficiaries of positive action measures, expressed concerns on the impact of involvement with positive action initiatives on the treatment of beneficiaries. Objective Three was explored in Chapter Six on participants' perceptions of the EFL's Recruitment Code that outlined how, despite the Recruitment Code being seen as a positive first step, at present it is a fairly flawed form of positive action due to a general lack of understanding of the Code and a lack of effective implementation. This Objective was also considered in Chapter Seven, which found that the problems with the EFL's Recruitment Code are likely exacerbated by an apparent lack of adherence to both the positive action legal framework in Great Britain and the principles of effective reflexive regulation, identified by Hepple (2011), particularly in relation to a lack of transparency regarding the consultation and enforcement processes. Objective Four was met in Chapter Eight, which outlined participants' views on ways to increase

the effectiveness of the Recruitment Code, focussing on: sanctions; improved levels of buy-in and understanding; a holistic package of measures; full recruitment processes, and the introduction of measures throughout the football pyramid. Participants' views in this regard, alongside the overall findings from within this thesis, were used to develop a series of pointers for action at Micro (Club), Meso (Sector) and Macro (National Policy) Levels (see Appendix G for a full list of these pointers for action).

In summary, this research found that BAME managers and coaches face significant barriers to career progression within English professional football. Whilst the EFL's Recruitment Code may have the potential to be successful if implemented effectively as part of a holistic package of measures, at present it is a fairly flawed form of positive action aimed at redressing racial disadvantage within professional football coaching in England. Further, this research also identified that there is a general lack of understanding of positive action, which results in a lack of support for this means of addressing inequalities and disadvantage.

10.3 Significance of Research

The successful implementation of a positive action initiative within English professional football can have a significant impact on the use of positive action generally. At present, positive action is largely misunderstood and underutilised, and more work is needed to increase understanding of the concept, particularly in reference to the "conceptual confusion" (YWT, 2018, p. 33) between positive action and positive discrimination. If the EFL's Recruitment Code is amended as outlined in the Implications Chapter (Chapter Nine), to provide greater transparency and more effective enforcement, the Code could become a key example of both successful positive action and the legislative approach of reflexive regulation working effectively. Given the role that football plays within society, and the challenges involved with implementing such measures in football, the successful implementation of the EFL's Recruitment Code could provide an important case study that helps to increase understanding and awareness of positive action, encouraging greater

use. Further, the successful implementation of a positive action measure within an arena such as professional football could encourage a reflexive approach to be considered within additional areas of equality legislation.

10.4 Implications for Future Research

This research focused on perceptions of the EFL's Recruitment Code as a form of positive action to increase the representation of BAME managers and coaches. When the interviews within this research took place, the EFL's Recruitment Code was at its pilot stage and there was little detail provided on the monitoring and enforcement processes. Because of this, and the changes that have been made to the Recruitment Code since these interviews took place, there is clear scope for future research which evaluates the effectiveness of the Code in achieving its aims of increasing the number of BAME managers and coaches employed within the EFL.

As discussed above, a key theme that emerged throughout this research was the specificity of football. Whilst the impact that this specificity has on the implementation of measures aimed at advancing diversity and inclusion has been explored to some extent within this research, there is scope for future research to explore this impact in greater detail. Linked to this, as reflexive regulation has been identified as a potential way to overcome issues caused by this specificity, there is also scope for future research focused solely on reflexive regulation and the role that it may have in encouraging action in areas that are resistant to outside interference, such as football. Further research could also consider implications of the UK's withdrawal from the European Union on the implementation of positive action initiatives within football and beyond.

A final key area for future research is to consider the potential for expanding the Recruitment Code to cover other protected groups, such as women (as with the recent introduction of the FA's Leadership Diversity Code), the LGBT+ community and disabled people. As outlined throughout this thesis, approximately 25% of players are BAME but only 4.6% of coaches are BAME

(SPTT, 2017). As such, to promote the inclusion of other protected groups, it is important to research whether participants would be as supportive of measures for groups where there is not such a stark underrepresentation between players, and coaches and managers. Further, future research could also consider the introduction of a similar Recruitment Code within other areas, such as other sports like rugby, and other sectors beyond sport.

10.5 Final Comment

From Tommie Smith and John Carlos's Black Power salute during their medal ceremony in the 1968 Olympics to Colin Kaepernick taking the knee in 2016, an action which was followed by all Premier League players in June 2020, sport has often been seen as a vehicle for change. Sport England (2000), for example, argue that "sport plays a major role in promoting the inclusion of all groups in society" (p. 3). The role of sport in promoting inclusion has been seen to some extent: Viv Anderson became the first Black player to play for England in 1978, nine years before the first ever Black MPs were elected in 1987. The role that sport can play in advancing diversity can perhaps be illustrated through the number of BAME professional football players in the English leagues, where 25% of players are BAME, significantly higher than the general UK population of 14% (SPTT, 2017). Similar to the way in which football is often held as a vehicle for change, the legal concept of positive action is also viewed as a means through which inclusion can be advanced and underrepresentation challenged. The YWT argue that "positive action is an important... tool to address disadvantage and tackle underrepresentation" (2018, p. 9) and Davies argues that "Used appropriately and robustly, positive action can provide a vitally effective means of tackling disadvantage and underrepresentation" (EHRC, 2019, para. 14).

Despite the apparent potential of both sport and positive action to achieve greater diversity, both often fall short. Positive action is largely under-utilised and misunderstood, with Davies and Robison (2016) arguing that positive action "has notoriously been a neglected and highly controversial area in the United Kingdom" and that "organizations prefer to steer clear of this

opportunity to address disadvantage suffered by protected groups” (p. 83). Sport also often fails to reach its potential. Using the above examples, Smith and Carlos were stripped of their medals following their protest, and Colin Kaepernick was released by his team and not signed by any other. The failure of sport to reach its potential in advancing inclusion is clearly illustrated by the underrepresentation of BAME managers and coaches where, despite 25% of players being BAME, only 4.6% of senior coaches are BAME (SPTT, 2017).

It is argued here that the use of positive action within sport can be a way to overcome the barriers detailed with both positive action and sport in addressing underrepresentation. The successful use of positive action within such a high-profile arena as English professional football can act as an example for other areas, leading to greater understanding and, ultimately, use of positive action within society as a whole. Further, implementing an effective positive action measure to address one of the most prevailing diversity and inclusion issues within sport can help it to become closer to achieving its potential as set out by Nelson Mandela at the inaugural Laureus World Sports Awards in 2000:

Sport has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does. It speaks to youth in a language they understand. Sport can create hope where once there was only despair. It is more powerful than governments in breaking down racial barriers. It laughs in the face of all types of discrimination. (Laureus, 2019, para. 4)

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List of Appendices

- A. Semi-Structured Interview Guide
- B. Written Questions Provided to Harry
- C. Participant Information Sheet
- D. Participant Consent Form
- E. Handout on EFL's Recruitment Code Provided to Participants
- F. Book Chapter "Using Reflexive Regulation to Increase the Racial Diversity of Professional Football Coaching in England: the EFL Voluntary Code of Recruitment." Included within Bradbury, Lusted and van Sterkenberg (1st Ed.), *'Race', Ethnicity and Racism in Sports Coaching*. Oxford: Routledge (evidence of dissemination)
- G. List of Pointers for Action
- H. Summary of Findings

Appendix A

SEMI-STRUCTURED INTERVIEW GUIDE

WELCOME

Thank you for agreeing to be part of the interview process. It should take between 30 minutes and an hour. I appreciate your willingness to participate.

INTRODUCTIONS

Sophie Cowell

Explain that I am not representing Kick It Out or any similar organisation

Outline what is meant by 'positive action' and the English Football League's rules – provide a handout outlining these.

WHAT IS A SEMI-STRUCTURED INTERVIEW?

A semi-structured interview is not highly structured, as is the case in an interview that consists of solely closed questions, nor is it unstructured, such as where the interviewee is given a license to talk freely about anything that arises. Semi-structured interviews offer topics and questions to the interviewee, but are designed to elicit the interviewee's ideas and opinions on the topic of interest, as opposed to leading the interviewee toward preconceived choices. They rely on the interviewer following up to get in-depth information on topics of interest. The two key principles of semi-structured interviews are to strive to avoid leading the interview or imposing meanings, and to strive to create relaxed, comfortable conversation.

PURPOSE OF SEMI-STRUCTURED INTERVIEWS

Having held a focus group with students on the perceptions of the use of positive action within football coaching, I am now conducting semi-structured individual interviews with participants more directly involved with football. I wish to consider views on the English Football League's ('EFL') new rules aimed at increasing the number of Black, Asian and Minority Ethnic ('BAME') football coaches and managers. After reviewing the relevant literature, it is considered that there is a need to consider how positive action schemes are likely to be received, with a particular focus on the EFL's new rules. You will be provided with a copy of these rules to refer to.

The findings from the study will form part of a doctoral thesis and may be disseminated at conferences and in academic publications.

I need your input and want you to share your honest and open thoughts with me. I have identified various themes for discussion and I will introduce each theme briefly before asking you questions based on that theme.

GROUND RULES

1. I want you to do the talking

This is your opportunity to talk to me about your perceptions of the use of positive action within football coaching. Whilst I will provide some structure to the interview, you should feel free to raise the issues you wish to explore.

2. There are no right or wrong answers

Your experiences and opinions are important. There are no right or wrong answers and I want to hear your views.

3. Confidentiality and anonymity

Data collected will form part of a doctoral thesis and may be used in academic publications and presented at conferences. The transcript of this interview will be available upon request and you may make comments on it. Your personal details will remain confidential and your anonymity will be protected at all times.

4. I will be audio recording the interview

I want to capture everything you have to say. I won't identify anyone by name in subsequent works. You will remain anonymous.

DISCUSSION THEMES

Background Information

I would like to know a little about your background – please could you describe your involvement with football to date?

Football Recruitment Practices

I would like to hear your views or experiences on the recruitment practices used in football generally.

Career Progression of Black, Asian and Minority Ethnic Coaches

Here I would like to discuss your views or experiences of career progression of BAME coaches.

The Use of 'Positive Action' Initiatives within Football

I would like to hear your views or experiences on the use of positive action initiatives within football generally and any potential impact they may have.

The English Football League's Rules

I would like you to discuss your opinion of the specific rules introduced by the EFL, the way they are drafted and enforced.

Reception of the Rules

I would really like to know how you feel these rules will be received by different categories of people and whether you believe they will be successful.

Looking Forward

Here I would like you to consider the potential wider impact of these on football, other sports and society generally.

SUMMARY

After 45 minutes summarise the findings and ask if there is anything further they wish to add.

CONCLUSION

Thank you for your time, a copy of the transcript and final report will be available upon request.

Appendix B

Written Questions Provided to Harry

Thank you for agreeing to answer these questions on the use of positive action within football coaching, in particular the EFL's Recruitment Code. I really appreciate your willingness to take part and I am very interested in your views. I have suggested some topics for discussion below, however please feel free to raise anything that you think it is important; there are no right or wrong answers.

"Positive action" can be defined in a number of ways, however it is generally considered to be "An activity designed to improve the position... of a given social group or subgroup... on the basis that its members suffer systematic disadvantage in that regard". (Barnes, 2009, p. 652)

1. Background Information

I would like to know a little bit about your background – please could you state what you consider your ethnicity to be? (Please note that you do not have to answer this). Please could you describe your involvement with football to date?

2. Football Recruitment Practices

I would like to understand your views/experiences on the recruitment practices used in football generally.

For example:

- What is your opinion on the ways in which football clubs recruit coaches and managers? Would you consider these practices to be open and fair?
- Do you think these practices negatively impact certain groups?

3. Career Progression of Black, Asian and Minority Ethnic Managers and Coaches

This encompasses your views or experiences of the career progression of BAME managers and coaches.

For example:

- Do you think there is a difference between the career progression of managers and coaches from a BAME background and those from a white background?
- Do you think that BAME coaches and white coaches are expected to reach different standards?

4. The Use of Positive Action Initiatives within Football

- I am interested in your views/experiences on the use of positive action within football and the potential impact it may have. Are you in favour of using positive action to increase the numbers of BAME managers and coaches?

5. The English Football League's Recruitment Code

Are you aware of the consultation/discussions behind the Recruitment Code? If so, please can you tell me a little about this?

What are your views on the EFL's Recruitment Code? For example, what are your views on the way it has been drafted? Do you think that it is the most appropriate way to increase the representation of BAME managers and coaches?

Do you think the Code should be enforced with sanctions? If so, what sort of sanctions do you feel would be appropriate?

6. Reception of the Rules?

I would really like to know how you feel these rules will be/are being received by different stakeholders within football.

For example:

- How do you think the rules will be received by players/coaches/fans?
- Do you think the Recruitment Code will have any impact on the treatment of BAME coaches?

7. Do you think the Recruitment Code has the potential to be successful in increasing the numbers of BAME coaches and managers?

8. Looking Forward

Finally, I would like to hear your views on the wider impact of the Recruitment Code on football, other sports and perhaps society in general.

For example:

- Do you think formal rules can impact on wider football culture?
- Would you support the introduction of similar rules for other protected characteristics?
- Do you think the successful implementation of these rules could impact other sports or even society in general?

9. Any Other Comments

Considering your experiences and your personal views, are there any other comments you wish to make?

Many thanks for your time in completing these questions; I really appreciate your willingness to take part.

Please return this form to Sophie Cowell at s.cowell@chester.ac.uk

Appendix C

Participant Information Sheet

Name of department: Law School

Title of the study: Exploring Perceptions of the Use of Positive Action to Increase the Representation of Black, Asian and Minority Ethnic ('BAME') Football Managers and Coaches

Introduction

You are invited to take part in a research study conducted by Sophie Cowell, a University of Chester doctoral candidate. It is important to note that Sophie Cowell is a member of Kick It Out's Youth Guidance Group, an advisory group that aims to assist with ensuring that Kick It Out's campaigns are engaging for young people – this position has no bearing on this research and Sophie Cowell does not represent the advisory group, Kick It Out or any other similar organisation within this research. Before you decide to take part, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

Please note that this research will use the term Black, Asian and Minority Ethnic ('BAME'), as this tends to be the term adopted within the sector.

What is the purpose of this investigation?

In June 2016, the Football League outlined its plans to introduce an equivalent to the 'Rooney Rule', used within the NFL in the United States. These plans can be considered a form of 'positive action', requiring teams to interview at least one Black, Asian and Minority Ethnic ('BAME') candidate (where one has applied) for academy positions, and enables clubs to volunteer to do the same for first team positions. This research aims to consider your views on these rules and will form part of doctoral research exploring wider perceptions of these rules, in order to consider how they are likely to be received and whether they are likely to be successful.

Do you have to take part?

It is entirely up to you to decide whether or not to take part. If you decide to take part you are still free to withdraw at any point, without giving a reason. If you do wish to withdraw during the interview, please indicate your wish to withdraw verbally and then the interview will be stopped. If you wish to withdraw after the interview, please contact Sophie Cowell (s.cowell@chester.ac.uk). It may not be possible to remove specific comments from the recording; however, a copy of the transcript will be available upon request and you can contact Sophie Cowell to ask for any of your comments to be removed.

What will you do in the project?

If you decide to take part, you will be asked to complete and sign a consent form to prove that you have agreed to take part. You will only be required to take part in one interview with a researcher that will last for less than an hour. The interview will take place at a location and time that is convenient for you. The interview will allow you to share your valued views and/or experiences of the English Football League's proposals and wider measures aimed at increasing the numbers of BAME coaches. The meeting will be audio taped to allow the researcher to listen to the interview again to transcribe and analyse it accurately. You will not be identifiable in subsequent use of the data. To ensure confidentiality you will be assigned a pseudonym name and any other names, such as colleagues or employer company names will be removed from the transcript.

Why have you been invited to take part?

You have been invited to take part in the research because you are involved with football and your views and experiences are very important to this study.

What are the potential risks or disadvantages of taking part?

As we will be discussing subject matter that may be of a sensitive nature, it is possible that you may become upset or suffer from emotional distress. If you do become upset or suffer from emotional distress it is advised that you contact your employer to discuss the occupational health services available to you. Moreover, I am aware that the length of time to take part in this study may be of an inconvenience. I appreciate that you are very busy but I would really value your views.

What are the potential benefits of taking part?

The study may not be of direct benefit to you but the information I get from the study will help to increase the understanding of the perceptions of these regulations, and findings may help to influence change in the future.

What if something goes wrong?

I do not anticipate anything going wrong but if you have any concerns about any aspect of the way you have been approached or treated during the course of this study, please contact: Professor Jethro Newton, j.newton@chester.ac.uk

In line with good practice in research governance, I am obliged to inform you that if you are harmed through taking part in this research project, there are no special compensation arrangements. If you are harmed due to someone's negligence (but not otherwise), then you may have grounds for legal action, but you may have to pay for this.

Will my taking part in the study be kept confidential?

All information collected about you during the course of the research will be kept strictly confidential. Your consent form will be stored in a locked filing cabinet that can only be accessed by the researcher. The interview recording

will be stored on a password-protected computer that can only be accessed by the researcher carrying out the research.

What will happen to the results of the research study?

The results will be used to form part of a doctoral thesis and it is possible that the findings will be disseminated via conference presentations and future publications. It is also hoped that the findings may be used to inform future research, policy and practice in this area. It is important to emphasise that if you choose to participate you will not be identified in any subsequent presentation or publication.

Who is organising and funding the research?

This research is being organised by the Law School, University of Chester.

Who may I contact for further information?

If you would like more information about the research before you decide whether or not you would be willing to take part, please contact:

Sophie Cowell, Doctoral Candidate, School of Law, University of Chester.

E-mail: s.cowell@chester.ac.uk Telephone: +44 (0)1244 512447

Acronyms Used:

'EFL' - English Football League. This consists of the Championship, League One and League Two, and is where the positive action interview regulations have been introduced.

'BAME' – Black, Asian and Minority Ethnic. This term has been adopted within this research as this is what is most commonly used within the sector.

Thank you for your interest in this research.

Appendix D

Participant Consent Form

Department: Law School

Title of Project: Exploring Perceptions of the Use of Positive Action to Increase the Representation of Black, Asian and Minority Ethnic ('BAME') Football Managers and Coaches

Name of Researcher: Sophie Cowell

**Please Initial
Box**

1. I confirm that I have read and understood the participant information sheet for the above study and have had the opportunity to ask questions.
2. I am aware and consent to audio recordings being made of this session and for the audio recordings to be used as stipulated in the Participation Information Sheet.
3. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason and without my care or legal rights being affected.
4. I agree to take part in the above study.

Name of Participant

Date

Signature

Researcher

Date

Signature

Appendix E

Handout on EFL's Recruitment Code Provided to Participants

THE ENGLISH FOOTBALL LEAGUE'S REGULATIONS¹

MANDATORY REQUIREMENTS AT ACADEMY LEVEL:

Under EFL regulations:

- Clubs will be required to advertise any position within the club's Academy that requires the individual to hold a UEFA A or UEFA B coaching badge on the club's website and the EFL website for a minimum of 7 days.
- Clubs must include at least one suitably qualified BAME candidate (where an application has been received) on the interview shortlist for that position.
- Clubs must appoint the successful candidate on the basis of merit alone.
- Clubs must provide details of the recruitment process to the EFL, including the number of BAME applicants and the number of BAME candidates interviewed.
- Clubs will be permitted to fill a position by promoting an internal candidate (from a position requiring a UEFA A or B coaching badge only) without applying the above process. However, the position vacated by that individual must be filled in accordance with the new regulations.

¹ Information taken directly from English Football League website:

English Football League (2016). EFL Clubs Approve BAME Managers and Coaches Proposals. <<http://www.football-league.co.uk/news/article/2015/football-league-clubs-back-bame-managers-and-coaches-2483040.aspx>> [Accessed 5 September 2016]

VOLUNTARY RECRUITMENT CODE IN FIRST TEAM FOOTBALL:

- During the season, clubs will be expected to interview one or more BAME candidate for any First Team managerial/coaching role (where an application has been received) in instances where they run a full recruitment process.
- During the close season, clubs will be expected to run a full recruitment process for any First Team managerial/coaching role during which they must interview one or more BAME candidates (where an application has been received).

Appendix F

Book Chapter

Using reflexive regulation to increase the racial diversity of professional football coaching in England: the EFL voluntary code of recruitment

Sophie Cowell

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Abstract

This chapter will consider the effectiveness of formal responses to inequalities in stimulating change within the racial diversity of professional football coaching. It will focus on whether the English Football League's ('EFL') Recruitment Code, which requires clubs to interview at least one Black, Asian or Minority Ethnic ('BAME') candidate, can be considered an example of the doctrine of 'reflexive regulation', i.e. "enforced self-regulation" (McCrudden, 2007, p. 259) working effectively. Fredman (2012) argues that previous forms of regulation, in the form of protection for individuals against discrimination, have failed to address embedded "structural inequalities" within society (p. 266). Professional football coaching clearly illustrates this: despite a significant proportion of BAME professional footballers - approximately 25% (Bradbury, 2015) - the number of BAME coaches has remained disproportionately low (approximately 4% [Sports People's Think Tank, 2016]). The failure of existing anti-discrimination regulations in achieving social change has led many to look towards a 'reflexive' approach, where direct state control is replaced with internal control. Under this, the law acts as "a stimulus to self-regulation" (McLaughlin, 2014, p. 5), with subsystems required to devise their own solutions. (Fredman, 2011, p. 419). McCrudden argues that this reflexive approach is particularly evident within the "greater legal space for employers to engage in positive action" under the Equality Act 2010 (p. 258). As the EFL appears to have utilised the permissive positive action regulations to devise its own 'solution' to a prevailing issue, arguably the Recruitment Code provides

an example of reflexive regulation working effectively. This chapter will draw on both theory and empirical data, through opinions from key stakeholders in football, to consider the extent to which this is the case, and the extent to which stakeholders believe that formal regulations, such as the EFL's code, are the most appropriate way of stimulating change within football.

Introduction

Despite advances in on-the-field racial diversity within English professional football, the underrepresentation of Black, Asian and Minority Ethnic ('BAME') managers and coaches remains a significant issue. An established body of research into the experiences of BAME managers and coaches has recently emerged, which explores reasons behind this underrepresentation (see Sports People's Think Tank ('SPTT') 2015; Cashmore and Cleland 2011, Bradbury, van Sterkenburg and Mignon 2016). However, research into specific measures aimed at tackling underrepresentation, particularly recent policies introduced by football authorities, is still developing (see Bradbury 2016; and Conricode and Bradbury Chapter 13 of this collection). Further, the broader issue of racism in football is "still largely unexplored" from an anti-discrimination law perspective (Veuthey 2013, p. 76). This chapter aims to fill this gap by considering the extent to which permissive, rather than mandatory, legislation may have encouraged the English Football League ('EFL')ⁱ to introduce their Voluntary Code of Recruitment. Introduced in 2016, the Code is similar to the 'Rooney Rule' from the National Football League ('NFL') in the United States. This chapter will provide background context to the Code, then outline the legal framework, before considering the extent to which the introduction of the Code demonstrates the legislative approach of 'reflexive regulation' or "enforced self-regulation" (McCrudden 2007) working effectively. It will conclude by using reflexive regulation theory to recommend ways to increase the success of the Code.

The chapter considers the Voluntary Code to be a form of positive action. Positive action is a contested term, with no clear legal definition. Barmes defines positive action as an "activity designed to improve the position, in terms

of the distribution of benefits or dis-benefits, of a given social group or subgroup... on the basis that its members suffer systematic disadvantage in that regard" (2009, 623). This definition broadly informs the way in which the term is used in the chapter.

Additionally, the term 'Black, Asian and Minority Ethnic' or 'BAME' will be used throughout. It is acknowledged homogeneous terms conceal "substantial diversity" (Aspinall 2011, 33). However, it is considered "any official category will conceal some heterogeneity" (Aspinall 2009, 1425) and 'there is little in the lexicon of terms that is not contested' (Aspinall 2002, 804). Although ideally imposed categorisation should be avoided in ethnicity research, a theoretical analysis requires a consistent approach towards terminology, thus it is considered necessary to use the terms adopted by others who are researching, practising and developing policy in this area. The EFL's Voluntary Code utilises the term 'Black, Asian and Minority Ethnic' (The Football League 2015ⁱⁱ); this is also used by key organisations in this area, such as the League Managers Association ('LMA') and Kick It Out, football's leading equality and inclusion organisation. BAME is also the salient term adopted throughout the UK beyond the football context, used within Government reports, official healthcare, education and criminal justice settings, and beyond. This chapter will refer to 'minority' coaches/candidates when discussing the USA context, as this is the term generally adopted by those researching the Rooney Rule (see Collins 2007; Corapi 2012) and is thus the salient term in the given context. Further, this chapter will refer to both 'managers' and 'coaches'. In this context, a 'manager' is only the first-team head coach, who almost always will have wider responsibilities and duties beyond simply coaching, whereas 'coaches' includes all first-team coaches, and the development and youth squad coaches.

BAME Managers and Coaches – The Current Position

Since Viv Anderson became the first BAME footballer to play for the England first-team in 1978, professional football in the English leagues has made significant advances in on-the-field racial diversity. Whilst high profile incidents, such as West Ham United FC's Head of Recruitment, Tony Henry, stating African players "cause mayhem", (BBC 2018a) and incidents of racist abuse aimed at BAME players Raheem Sterling (BBC 2018b) and Wilfred Zaha (Press Association 2018) suggest an ongoing difficulty in embedding equality and inclusion, the levels of diversity amongst players has significantly increased. Currently, up to 30% of all professional footballers are BAME, significantly higher than the general UK population of 14% (SPTT 2017). Despite the advances in on-the-field racial diversity, the situation at managerial and coaching levels is different. In October 2018, 7 of 92 (7.6%) first- team managers were BAME. Whilst this was an improvement on previous years (on 1st September 2017, 3 of 92 (3.3%) first-team managers were BAME) it demonstrates a significant underrepresentation compared to both BAME players and the general population. This lack of representation is also seen in the wider coaching community: on 1st September 2017, 22 of 482 (4.6%) senior coaching positionsⁱⁱⁱ were held by BAME coaches, with only 18.5% of clubs employing BAME coaches in senior positions (SPTT 2017).

Research by the SPTT identified key barriers to BAME coach career progression: over-reliance on networks-based recruitment; conscious and unconscious racial bias and stereotypes, and a consequent lack of BAME role models at all managerial and coaching levels (SPTT 2015, 4). A follow-up report in 2017 argued the statistics outlined above demonstrate these barriers are "institutionally embedded" and thus "remain firmly in place" (SPTT 2017, 9). Some studies have pointed to an actual and/or perceived lack of *qualified* BAME coaches (see Cashmore and Cleland's 2011 study on the views of 1,000 football fans). Consequently, commentators have called for action to redress actual and perceived disadvantage in this area. Peters (2014) argues to increase representation of BAME managers and coaches, the focus should be grassroots level, using positive action to encourage "under-represented

groups to undergo training courses and gain relevant qualifications". Until recently, football authorities have focused positive action programmes on increasing numbers of qualified BAME coaches; for example, the COACH Bursary Programme funds coaching qualifications for BAME applicants (The FA 2015). Increasing access to coach education is much needed, and research by Bradbury (2016, 144) found the bursary helps coaches "break into... some historically closed professional club coaching networks". However, this alone is insufficient to address the systematic barriers identified by the SPTT, and Bradbury argues a "holistic package of more strident positive action measures" is needed (2018, 25).

Statistical evidence suggests a lack of suitably qualified managers and coaches is not the only issue. The proportion of high-level qualified BAME coaches is 8.3% (SPTT 2015). Whilst this is significantly lower than the general population (14%) and, particularly, the number of BAME players (30%), it is almost double the number of coaches who are employed, outlined above as 4.6% (SPTT 2017). This suggests whilst the number of high-level qualified coaches is not representative of the number of BAME players, and work is required to address this, a fundamental problem for qualified BAME coaches appears to be accessing employment opportunities. Therefore, there have been calls for greater focus on assisting qualified coaches to gain employment, rather than continuing to roll out developmental opportunities like coaching courses. Although (in the UK at least) there have been various forms of Equality Standards for football clubs since 2004, the evidence suggests these have also been limited in the extent to which they have increased the representation of BAME managers and coaches (Bradbury 2011). For several years there have been widespread calls for a version of the 'Rooney Rule', used within the NFL in the USA, to be introduced into English football. Calls for an 'English Rooney Rule' were made by notable BAME players and managers, including Paul Ince (Ornstein 2014), Jason Roberts (BBC 2014a) and Sol Campbell (Brown 2015). Key organisations campaigned for its introduction for several years: the Professional Footballers' Association (PFA) began discussions with Cyrus Mehri (instrumental in developing the NFL's

Rule) in 2011 (Kick It Out 2011) and Kick It Out have long been supporters of such a Rule (BBC 2014b).

The Rooney Rule, named after Pittsburgh Steelers owner Dan Rooney, was introduced in 2003 following recommendations by the Workplace Diversity Committee. The Rule requires NFL teams to interview at least one minority candidate for all head coaching and senior football operations jobs (Duru 2008). Collins (2007) argues the Rooney Rule works by countering the unconscious bias associated with minority coaches and reducing reliance on “Old Boy” networks, thus helping to resolve the catch-22 situation, whereby “Old Boy” networks were relied upon for recruitment, but minority coaches were not given opportunities to break into

these networks. There is little room in this chapter to add to or evaluate the existing critique of the Rooney Rule; however, it is important to note the impact it has had. Prior to its introduction, 70% of NFL players but only 3 of 32 head coaches were minority ethnic (Cashmore and Cleland 2011). By 2015, 17 of 87 vacancies (20%) had been filled by minority ethnic candidates (Fox 2015), with minority ethnic candidates now 19-21% more likely to fill an NFL head coach vacancy than prior to the Rule’s introduction (DuBois 2015). The Rule has strict sanctions and there has only been one identified breach, occurring in 2003 shortly after its inception. In response to this breach, the Detroit Lions’ General Manager was personally fined \$200,000; the then-Commissioner promised the next breach would result in a \$500,000 fine, showing the Rule had “teeth” (Duru 2008). Given the Rooney Rule’s relative success in combating barriers similar to those “institutionally embedded” in English football (SPTT 2017), it is clear to see why there have been widespread calls for the Rule, or an equivalent, to be introduced.

Whilst there had been calls for the introduction of the Rule into English football for some time, this dialogue gained steam in 2014, when the EFL came under mounting pressure to act. The then-EFL Chairman Greg Clarke was heavily criticised for failing to raise the issue at the 2013 Annual General Meeting, despite assurances he would do so – although he claims this was due to changes to the EFL Board (Ornstein 2014). This led to claims by PFA Chief

Executive Gordon Taylor that the EFL had failed to fulfil its promise (Conway 2014), and Garth Crooks, a long-term campaigner for the introduction of the Rule, called on Clarke to resign (Ornstein 2014). Considering that until this point the EFL had failed to act, arguably this wider pressure on both the EFL, and Clarke personally, led to the issue being raised at the 2015 AGM, where clubs agreed formal action should be taken (The Football League 2015).

The EFL's initial proposals (summarised below) consisted of a Mandatory Recruitment Code for academy football, which was immediately rolled out to all 72 clubs, and Voluntary Recruitment Code for first-team football, to be trialled by ten teams (EFL 2016). This chapter focuses on the Voluntary Recruitment Code; for a consideration of the Mandatory Recruitment Code, see Conricode and Bradbury's Chapter 13 in this collection.

In summary, the Voluntary Recruitment Code for *first-team football* involved the following:

- • “During the season, clubs will be expected to interview one or more BAME candidate for any First Team managerial/coaching role (where an application has been received)

in instances where they run a full recruitment process;

- • “During the close season, clubs will be expected to run a full recruitment process for

any First Team managerial/coaching role during which they must interview one or more BAME candidates (where an application has been received).” (EFL 2016)

At the 2016 AGM, clubs gave their formal support to these proposals, which were introduced for the 2016-17 season (EFL 2016).

There was a lack of detail provided on how this pilot scheme would be monitored and whether there would be sanctions for non-compliance. During the pilot, the Code came under criticism, particularly when club

Wolverhampton Wanderers FC “completely failed to follow the process in appointing Walter Zenga” (SPTT 2016). In total, the Code was not followed five out of a possible eight times (Slater 2017). This raised questions around the lack of monitoring and evaluation of the Code, and the lack of sanctions non-compliance (SPTT 2016), particularly when compared to the Rooney Rule in the NFL where the one failure to follow the Rule resulted in significant penalties. Birmingham City, who did not interview a BAME candidate on two occasions, said they “abided by the agreement”, as the Code is only required when clubs run a full recruitment process, thus still allowing clubs to select a specific manager (Slater 2017). This further highlights the differences between the EFL’s Voluntary Code and the Rooney Rule, with the latter required to be followed in all circumstances.

Chair of Kick It Out, Lord Ouseley, stated the pilot showed clubs had “got away with doing nothing to achieve fair outcomes” (Slater 2017). Despite this criticism, the EFL found the pilot “useful in terms of understanding the practicalities” of the Code (EFL 2017a), eventually stating that they believe “this approach has the potential to deliver the right outcomes if operated by all clubs over a period of time” (EFL 2017b). Therefore, it was announced all 72 clubs had agreed to follow the Voluntary Code from 1st January 2018 to the end of the 2018/19 season (EFL 2017b).

Positive Action and the Law

The EFL’s measures can be considered a form of positive action, in line with Barmes’ (2009) definition provided earlier; indeed, the EFL themselves have referred to the measures using this term (EFL 2017). Some argue the Rooney Rule as it operates in the NFL more readily fits into the realms of positive discrimination in the UK framework (Banton 2014). Positive discrimination involves “recruiting or promoting a person solely because they have a relevant protected characteristic” irrespective of merit (Jarett 2011) and is unlawful. Because of this, it is argued here the EFL’s Code, which states clubs must

appoint the successful candidate on merit alone (The Football League 2015) is more closely aligned with positive action than positive discrimination.

Positive action in the UK is permitted by Sections 158 and 159 of the UK Equality Act 2010, which broadened the circumstances in which organisations could take positive action. S.158 applies to employment and beyond, where an employer (in this instance) *reasonably thinks*:

1. (a) “persons who share a protected characteristic^{iv} suffer a disadvantage connected to the characteristic,
2. (b) “persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
3. (c) “participation in an activity by persons who share a protected characteristic is disproportionately low” (S.158(1) Equality Act 2010)

In such circumstances, employers are permitted to take special measures where it is a proportionate means of achieving the aim of: meeting needs, addressing underrepresentation, or enabling or encouraging persons who share the protected characteristic to overcome or minimise disadvantage (Equality Act 2010).

S.159 applies to recruitment and promotion and permits organisations to utilise preferential treatment in the form of ‘tie-break’ provisions. A candidate from a protected group can be favoured over another candidate where the candidates are *as qualified as* each other, and the employer “reasonably thinks” the protected group is at a disadvantage, has a particular need, or is underrepresented. This can only be exercised where the aim of the measure is to encourage or enable protected groups to overcome disadvantage, it is a proportionate means of achieving the aim, and there is not a policy of automatically treating protected groups more favourably (S.159(4) Equality Act 2010).

Sections 158 and 159 are mutually exclusive; where one applies, the other will not. To firstly consider the EFL’s Voluntary Code in light of S.159, Corapi (2012, 381) argues an interview rule is most likely covered under this, because

a guaranteed interview is “exactly what section 159 is intended to permit”. He states that because S.159 permits organisations to factor in race when determining which candidates to recruit, a rule that requires clubs to interview at least one suitably qualified BAME candidate (where one applies) would be permitted under S.159, providing that if the club feels no such candidate has applied, the rule does not apply. However, it may be that the EFL’s measures are not easily accommodated under S.159. As stated, S.159 relates to recruitment or promotion. S.159(5) outlines that, for this purpose, recruitment “means a process for deciding whether to... offer employment to a person...”. It is not fully clear (and has not yet been tested in law) whether this only applies to the final decision regarding whom to appoint or promote, or whether it would cover the full recruitment process, including interview. As such, it may be that the EFL’s measures are more aligned to the special measures anticipated under the more general S.158, which enables employers to take proportionate action where there is a need, underrepresentation, or disadvantage.

Regardless of whether the EFL’s measures are more closely aligned to S.158 or S.159, the key issue is that, to fall within the scope of the Act and therefore be lawful, the measures must be ‘proportionate’. The positive action provisions of the Equality Act 2010 were introduced to bring positive action law in the UK in line with European Union (‘EU’) law; therefore, we must look to EU law to determine what can be considered ‘proportionate’. Connolly (2011) argues that for positive action to fall within the ambit permitted by EU law, there must be underrepresentation; the protected candidate must be equally qualified, and there must be a ‘savings clause’, requiring an objective assessment of all criteria specific to the individual candidates. Whilst it is clear that there is an underrepresentation of BAME managers and coaches, further research is needed to consider whether the EFL’s measures would be proportionate considering the ‘savings clause’ requirement and the apparent lack of monitoring and review.

The EFL’s Voluntary Code as Reflexive Regulation?

Positive action under the Equality Act 2010 is permissive rather than mandatory, so it is interesting to consider the extent that the law may have

played a role in encouraging the EFL to act, given legislation did not require them to do so. The EFL's engagement with positive action could be considered a result of a 'new' legislative approach working effectively. 'Reflexive regulation' can be thought of as "enforced self-regulation" (McCrudden 2007, 265). This focuses on the idea that, instead of introducing mandatory laws, it is more successful to introduce permissive legislation, whereby social systems can act but are not forced to do so. This recognises "the inner logic of individual social systems" (Cunningham 2015, 144) and allows them to develop solutions as they see fit. McCrudden (2007, 260) argues this legislative approach is evident within the positive action sections of the Equality Act 2010. As such, the EFL's introduction of a positive action measure may mean the permissive positive action provisions of the Act have had some success in encouraging action. Reflexive regulation theory can thus be used to consider whether the law may have triggered the EFL's action, and whether this might impact on its ultimate success.

Considering previous legislative approaches, Fredman (2012, 265) argues "despite increasingly sophisticated antidiscrimination laws, discrimination and inequality have proved remarkably resilient", therefore questions should be asked around the law's ability to achieve social change. She argues inequality is embedded within society so previous legislation,

centred around a retrospective complaints-based approach, providing individuals with the ability to act if they have suffered discrimination, is limited in its ability to address "structural inequalities" (266). This is supported by Hepple (2011, 316), who argues under the complaints- based approach, individual cases can have a positive effect, but this is "generally short lived, and can lead to defensive and negative attitudes to change".

The limitations of the previous complaints-based legislative approach can be seen within football. Whilst there exist anti-discrimination laws that apply to football - as with any other area of society - which provide a complaints process if a BAME coach is discriminated against, BAME managers and coaches are still underrepresented. When considering the barriers identified within above - particularly reliance on networks-based methods of recruitment and conscious

and unconscious racial bias and stereotypes (SPTT 2015, 4) - it is clear to see how a complaints-based approach, reacting to instances of discrimination, would not work to combat more covert causes of inequality. In fact, using legislation to bring a claim in this regard may perpetuate inequalities, due to the “defensive and negative attitudes to change” (Hepple 2011, 316) that often result from discrimination claims. The idea that challenging discrimination may lead to negative or defensive attitudes is seen within football, where those that challenge discrimination may be branded ‘trouble-makers’ (Kilvington 2016). Scott (2015, 1909) argues in European football, when BAME players complain about racialised behaviour, this has often been “held against them... “as a character issue””, which is then hard to shake, thus BAME players often remain silent about racism due to their “need to survive within white dominated institutions”. Given the networks-based methods of recruitment outlined above, being seen as a ‘trouble-maker’ will further increase difficulties for aspiring BAME coaches.

Because of the limited long-term impact of complaints-based approaches, Fredman (2012, 265) argues the way forward is to “fashion new legal tools”. Teubner’s solution is to utilise a reflexive regulation approach “which does not seek to impose substantive rules on sub-systems but instead works with the internal dynamics of those systems” (Hepple 2011, 320). The core concept of reflexive regulation is “enforced self-regulation” (McCrudden 2007, 265). Instead of solutions being imposed on a subsystem, it is “required to come up with its own set of solutions” (Fredman 2012, 419), with law acting as ‘a stimulus to self-regulation’ (McLaughlin 2014, 5). It is argued here that enabling subsystems to devise their own solutions is particularly beneficial to professional football, given sport has such a level of ‘specificity’, a term used to refer to “the inherent characteristics of sport which set it apart from other economic and social activities” (European Commission, 2016, p. 3). Sporting rules are distinct to societal norms and, particularly, general principles of equality law (Beloff 2012, 97). This means laws based on a ‘command-and-control’ approach, where solutions aimed at society generally are imposed on subsystems, are unlikely to be successful in addressing inequalities that exist within sport. This may explain why the EFL used the positive action provisions

of the Equality Act 2010, which enabled them to devise their own solutions and implement them in a way most suited to them.

Commentators have identified conditions required for measures devised through reflexive regulation to be successful. Considering the EFL's measures in light of these, we can consider the extent to which the law played a part in encouraging the EFL to act. Hepple (2011, 321) states reflexive regulation involves three interlocking mechanisms:

internal scrutiny by the organisation itself... The involvement of interest groups... who must be informed, consulted and engaged in the process of change ... [and]an enforcement agency... which should provide the back-up role of assistance, building capabilities and ultimately sanctions.

Considering Hepple's first mechanism regarding internal scrutiny, prior to the introduction of the Voluntary Code, the EFL undertook some form of consultation, stating the measures were finalised by "a working party of clubs" (EFL 2016). Internal scrutiny within each subsystem is an essential characteristic of reflexive regulation, building on the "problem-solving expertise of those who are in the best position to bring about change" (Fredman 2012, 272). Given a working party of clubs appear to have devised the measures based on their own assessment of the problem, and their appreciation of the specificity of football, reflexive regulation theory suggests clubs will feel greater ownership over the solutions, which are therefore more likely to be followed.

Hepple's (2011) second mechanism concerns the involvement of different stakeholders, and the EFL do appear to have consulted stakeholders. When announcing the measures, the EFL stated several organisations provided them with advice, including the NFL, the FA, Premier League, LMA, PFA and Kick It Out (EFL 2016). However, there is little information on the way this was conducted, and little detail on the extent BAME managers and coaches were consulted. Fredman argues "deliberative democracy" - involving the underrepresented group itself - is a key reason why reflexive regulation can be successful in addressing structural inequality (2012, 272). She argues "Groups subject to discrimination inevitably have unequal bargaining power and are

unlikely to achieve gains” through previous approaches; therefore, the reflexive approach, which ‘does not aim to resolve the issue according to the balance of political... power’ but through deliberation, will result in fairer outcomes. Considering Fredman’s arguments, the failure to consult with BAME managers and coaches may mean the EFL’s Code is far less likely to be successful in addressing structural inequalities BAME managers and coaches face. Even if BAME managers and coaches were consulted, the lack of transparency surrounding this process is a key limitation of the EFL’s measures as a form of positive action.

The key principle of reflexive regulation is that subsystems are encouraged to act voluntarily. However, Braithwaite (2008, 163) argues an important feature of successful reflexive regulation is ultimately it is supported by a gradual escalation of sanctions until compliance is reached. This supports Hepple’s third mechanism, involving “an enforcement agency... which should provide the back-up role of assistance, building capabilities and ultimately sanctions” (2011, 321). The EFL’s Code does not appear to align with reflexive regulation in this respect. There does not appear to be any external agency tasked with monitoring or evaluating the implementation and success of the measures, and the EFL do not appear to be imposing sanctions for non-compliance. The lack of sanctions has been one of the key criticisms of the EFL’s Code, with several commentators stating sanctions are needed for there to be any real impact: Duru argues “For the Rooney Rule concept to be effective in English football, it must have teeth” (Kick It Out 2017) and Lord Ouseley argued the Code needs to be “backed up by sanctions for non-compliance” due to the limited adherence during the pilot (Slater 2015). Considering the EFL’s measures in light of reflexive regulation theory demonstrates why the lack of sanctions is a concern for commentators. As both Braithwaite and Hepple argue, whilst reflexive regulation involves organisations devising their own solutions which, it is hoped, will mean they are more likely to be successful, it is important to have a gradual escalation of sanctions to ensure compliance. As the EFL did not support the Code with sanctions, the extent to which the law played a part in encouraging the EFL to act can be questioned. Further, as outlined, the Rooney Rule imposes strict sanctions for non-compliance, thus the lack of

sanctions for the EFL's Voluntary Code can be said to make it a much watered-down version of the Rooney Rule.

Conclusion

The EFL's Voluntary Code could be considered an example of the legislative approach of reflexive regulation working effectively, given that the EFL introduced a positive action measure when they were not required to do so by law. However, a consideration of the EFL's Code shows that key features of measures introduced in response to reflexive regulation are missing, particularly concerning the lack of information regarding consultation with BAME stakeholders, in addition to the apparent lack of monitoring and enforcement. The positive action provisions of the Equality Act 2010 apply to all industries, yet 'there are relatively few employers who are prepared to embrace positive action initiatives' (Davies and Robison 2016, 11). This suggests something other than legislation acted as a trigger for the development of the measures. Given that the EFL's Voluntary Code was introduced following high-profile campaigning for the introduction of the Rooney Rule into English football, and the surface-level similarities between the Code and the Rule, it may have been the apparent success of the Rooney Rule - coupled with the pressure the EFL faced at the time - that caused them to act. Whilst this sporting precedent is likely to have played a greater role than legislative theory in encouraging action, arguably the Voluntary Code is a watered-down version of the Rooney Rule, as it does not apply on every occasion and is not supported by sanctions.

Further, it is argued here that whilst the key features of reflexive regulation (consultation, monitoring and escalation to reach compliance) may be present in the Rooney Rule, they are lacking from the EFL's Code. As above, the Rooney Rule must be followed on every occasion and failure to do so results in severe penalties. Perhaps it is for this reason that there has only been one breach. In contrast, the EFL's Voluntary Code was not followed five out of eight times in the pilot alone, with no repercussions for non-compliance (Slater 2017). Arguably, as the EFL's Voluntary Code does not have all the

characteristics of successful reflexive regulation, it is less likely to be successful.

It is acknowledged that the EFL's Code is voluntary, and reflexive regulation involves subsystems devising their own solutions, thus we should be cautious in arguing there are 'must have' characteristics. It may be the EFL believe this version is likely to be most successful. However, for the Code to be more successful, the EFL should look to follow the characteristics of successful measures devised in response to reflexive regulation (consultation, monitoring and escalation to reach compliance), that are also present in the Rooney Rule in the NFL. Future research will consider the proportionality of the Voluntary Code in its current form in greater detail, as well as the impact that introducing sanctions, as with the Rooney Rule, may have on the legal status of a positive action measure in UK law, as affirmative action law in the USA is more permissive. It will consider whether this would take the measure outside of the scope permitted by Sections 158 and 159 of the Equality Act 2010, and the likely impact of sanctions on the success of the Code. However, it is argued here that, at a minimum, open and transparent consultation and monitoring processes should be introduced for the EFL's Voluntary Code. As well increasing the likelihood of success of the Voluntary Code, this will also help to demonstrate proportionality under the positive action legal framework.

Appendix G

List of Pointers for Action

Micro (Club) Level

1. Clubs should engage with education provided by the EFL on both positive action and the Recruitment Code to ensure a sound level of understanding throughout their club and amongst those taking part in the recruitment process.
2. Clubs should assist with the communication of the Code to fans, by supporting the EFL's suggested communication plan.
3. Many clubs provide education on equality, diversity and inclusion as part of community trust and academy programmes. Clubs should help to improve understanding of positive action by including the topic within these existing programmes. This should detail the context behind positive action, why it is necessary, how it operates and how it is distinguished from measures more closely aligned with positive discrimination. Embedding this within existing training should result in minimal cost implications.
4. Clubs should ensure effective implementation of the Recruitment Code throughout their organisations by not exploiting potential loopholes in the Code and instead committing to run full recruitment processes for both management and coaching vacancies and at first team and academy levels, accepting that the extra time and potential cost that this will take is necessary to increase representation. This will further support with compliance with the FA's Football Leadership Diversity Code, which also focuses on increasing diversity amongst professional football coaches.
5. The EFL Equality Code of Practice requires clubs to complete an annual State of Play survey for staff, coaches, match day staff and Board

members (EFL, n.d.). In order to evaluate where barriers to BAME progression may be arising, clubs should extend this further by also monitoring equality data in recruitment, namely of applicants, shortlists and appointments, in order to determine whether BAME candidates are applying for roles but not being shortlisted or appointed, or whether there is a lack of BAME applicants. Clubs should commit to reviewing this recruitment equality data, alongside the State of Play survey data, periodically; for example, every six months. Many clubs have HR and/or recruitment systems to monitor this data; however, some clubs, with fewer resources, may not have such systems in place. The implementation of sophisticated systems would have key cost implications; however, there are ways to collate this data with minimal cost, such as through free anonymous survey platforms.

6. Clubs should commit to reviewing their approach to the EFL's Recruitment Code in light of the equality monitoring data collected above and to making adjustments as needed, such as exploring ways to attract more BAME applicants and/or further training for those on recruitment panels.
7. Clubs should create an environment which enables the Recruitment Code to succeed, ensuring visible senior commitment through appointing an Executive Sponsor with responsibility for the effective implementation of the Recruitment Code. The EFL's Code of Practice requires a senior member of staff to be nominated to lead on EDI (EFL, n.d.) and this nominated person could also be responsible for the effective implementation of the Recruitment Code.
8. In order for the Recruitment Code to be effective, clubs should work to increase the racial diversity amongst senior decision makers more broadly, through placements, training and development opportunities. Whilst training and paid placements may require financial investment, initiatives such as work shadowing for existing staff and community-specific recruitment drives can be achieved with minimal cost. Further,

the provision of development opportunities is also required as part of the FA's Football Leadership Diversity Code, and this would thus further assist with the development of a holistic approach to addressing underrepresentation. Greater diversity in this regard would help to increase the success of the Code, if BAME applicants selected for interview through the Code are faced with a more racially diverse interview panel.

9. As the Recruitment Code concerns interviewing suitably qualified BAME candidates, clubs should provide anti-racism training to interview panels and those involved in recruitment. Where clubs currently have all-white interview panels, they should provide further training to those panels on the history of racial inequalities and the impact that an all-white panel may have on a BAME applicant at interview. Clubs should also utilise the provision of assistance with diverse interview panels suggested by the FA as part of the FA Leadership Diversity Code and as outlined below. This will help to increase the success of the Code in increasing the number of BAME managers and coaches recruited to positions and using the FA's assistance will keep costs to a minimum.

Meso (Sector) Level

1. The EFL should introduce a regulation requiring clubs to operate a full recruitment process in all circumstances, extending the current requirements at academy level to first-team level and encouraging them to see that the extra time and potential this would take is necessary to increase representation.
2. As with the FA Leadership Diversity Code, the EFL should help clubs to ensure they have diverse interview panels by providing panel members where possible. The EFL should create a register of accredited and trained panel members who can be used for this, and this register should include BAME former professional footballers. Whilst training interview panel members for this may require some financial investment from the

EFL, this would help to increase the likelihood of success of the Recruitment Code and, further, would provide development opportunities for those panel members.

3. The EFL should provide greater transparency on the Code, including the evidence base and consultation behind its introduction.
4. The EFL should publicise anonymised information on individuals and groups that were consulted, their findings and how this influenced the development of the Code. This could be done retrospectively and/or in advance of any amendments to the Code.
5. The EFL should publish clear guidance on the Recruitment Code, including a user-friendly guidance document for Clubs which outlines the scope of the Code and key examples of best practice. This should be supported by in-person training for individuals involved in recruitment at club level. The guidance and training could be embedded into the existing Equality Code of Practice process to keep additional costs to a minimum.
6. Whilst the EFL has dedicated equality campaigns, such as “Not Today or Any Day” which focus on tackling discrimination within football more generally (EFL, n.d.), there is currently no awareness campaign based on the Recruitment Code. As such, for fans, the EFL should introduce a communications campaign on the Recruitment Code, detailing how it operates, its scope and its limits. This campaign should include adverts in matchday programmes, posters on stadiums concourses and adverts on television (particularly during matches); the EFL could use the communication surrounding the introduction of Video Assistant Referees (VAR) in the Premier League at the start of the 2019/20 season as a template for this, which included short videos from high-profile individuals in the game.
7. The EFL should provide greater transparency on the extent to which the Code is followed by all 72 clubs, using an external agency to monitor this data and publish periodically.

8. The EFL should introduce awards or kitemarks for clubs that consistently comply with the principles of the Recruitment Code, enabling them to publicly demonstrate their commitment to best practice. This could operate alongside, or be embedding within, the existing EFL Equality Code of Practice.
9. The EFL currently operates the Equality Code of Practice, which requires clubs to take action to embed EDI across their organisation. As such, the EFL should ensure that the Recruitment Code is one initiative which forms part of a range of measures aimed at addressing BAME underrepresentation in management and coaching positions across their leagues. This should include bursaries, placements and training and development opportunities for BAME coaches and work alongside the Equality Code of Practice.
10. The EFL should implement a holistic package of measures aimed at increasing BAME representation amongst head office, executive and director roles to increase diversity amongst decision makers.

Macro (National Policy) Level

11. The Government Equalities Office (2011) has previously produced a “Quick Start Guide” and “Step-by-Step Practical Guide” to positive action. However, in light of the research findings, there is clear scope for more recent and more widely publicised guidance. As such, the Government and policy makers should produce updated clear written guidance on positive action, that is user-friendly, easily accessible and widely publicised. This should provide a clear definition of positive action, why it is necessary and list some key examples of what is and is not permitted. It should be publicised widely and directly shared with industry groups, regulatory bodies and other employer groups.

12. Written guidance should be further supported by training for employers provided by the Government, which could consist of free online training videos on positive action and how to effectively introduce positive action measures within organisations. Whilst the creation of training materials will have some cost, using online recorded training will help to keep this to a minimum.
13. Due to the similarities between the phrase 'positive action' which is lawful, and 'positive discrimination' which is not, and the confusion that often results, the Government should consider rephrasing the concept of 'positive action' to a term which instead highlights how such steps are means of 'levelling the playing field'.
14. The Government should provide further publicity and guidance on reflexive regulation and the space that it gives organisations to develop their own solutions to problems they may face, utilising Hepple's (2011) three interlocking mechanisms for effective regulation to produce a step-by-step guide to developing such measures.
15. The Government should review equality legislation more broadly to consider where a reflexive regulation approach can replace existing command-and-control approaches.
16. In light of the specificity afforded to football, the Government should encourage football organisations to further utilise positive action and reflexive regulation and to follow the requirements set out by Hepple (2011).

Appendix H

Summary of Findings

Research Objective	Research Question	Chapter	Overview of Findings
Explore stakeholder perceptions of the experiences of Black, Asian and Minority Ethnic managers and coaches within English football	What are stakeholder perceptions of barriers to the career progression of Black, Asian and Minority Ethnic football managers and coaches within English football?	Chapter 4 – Barriers to BAME manager and Coach Career Progression	<p>Chapter 4 outlined stakeholder perceptions on the barriers that Black, Asian and Minority Ethnic managers and coaches face in relation to their career progression in English football. Participants perceived there to be a number of barriers, namely:</p> <ul style="list-style-type: none"> • Higher standards – a perception emerged that BAME managers and coaches are held to higher standards than their white counterparts. • Extra pressure on BAME managers and coaches – there was a key perception that BAME managers and coaches are under extra pressure to perform if they are appointed to roles as they are viewed as representing their race and/or ethnicity. • Lack of role models – given that there have been relatively few high-profile BAME management and coaching role models,

			<p>participants outlined a perception that there is a glass ceiling that deters aspiring BAME managers and coaches.</p> <ul style="list-style-type: none"> • Racial stereotypes – participants perceived stereotypes regarding race and intelligence held by decision makers to be key constraining factors to BAME manager and coach career progression, particularly a perception that BAME individuals are natural athletes but lack management capabilities. • Limited opportunities for BAME Managers and Coaches – there was an emerging perception that BAME managers and coaches are given fewer opportunities than their white counterparts, as well as fewer second chances once they are dismissed from a role. • Recruitment practices – participants identified a perceived lack of formal recruitment practices and a reliance on closed-networks based methods of recruitment as barriers to BAME manager and coach career progression, as BAME managers and coaches are perceived to be excluded from such networks. • Specificity of football – participants discussed the unique nature of football and the perception that it has faced limited outside
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			<p>interference as a barrier to BAME management and coach career progression, as this means that practices which disproportionately impact BAME managers and coaches have remained unchallenged.</p> <p>Similar perceptions were held by participants both with and without management and coaching experience, suggesting that these perceptions exist amongst ‘insiders’ and ‘outsiders’ in this regard. Many of the barriers identified within this research are similar to those identified within existing literature in this area, particularly the SPTT (2014-18) reports and research by Bradbury, van Sterkenburg and Mignon (2018). However, although there is literature on the specificity of football and sport more generally (see <i>inter alia</i> Beloff, 2012), at present there appears to be little existing literature on the impact of the specificity of football on BAME manager and coach career progression.</p>
Consider stakeholder perceptions of the concept of positive action and its use in	What are stakeholder perceptions of the use of positive action under the	Chapter 5 – Perceptions of Positive Action	<p>In this research, all EDI Practitioners, Academic Researchers, and Coaches and Former Players expressed outward support for positive action as a means of addressing underrepresentation and disadvantage generally. Many participants within this research that have EDI experience, either as a Practitioner or Academic Researcher,</p>

addressing underrepresentation	Equality Act 2010 to address underrepresentation generally, both within and beyond the football context?		outlined a perception that positive action is not widely supported or understood amongst the general population, with an emerging perception that it is generally conflated with measures more closely aligned with positive discrimination, as was also identified in the YWT (2018) and EHRC (2019) research. This perception appeared to be demonstrated by the Fan participants, all four of whom stated that they did not support positive action, largely because it is seen to be unfair on white people and challenging meritocracy, suggesting a lack of understanding of the way in which positive action operates. Further, whilst all coaching/playing participants expressed outward support for positive action, some of these participants outlined concerns with such measures being a form of reverse discrimination and/or being labelled as a result of a positive action initiative.
Evaluate whether the EFL's Recruitment Code is an effective and legal form of positive action and reflexive regulation in	What are stakeholder perceptions of the EFL's Recruitment Code as a form of positive action?	Chapter 6 – The EFL's Recruitment Code	Research participants outlined a variety of perceptions of the EFL's Recruitment Code as a form of positive action aimed at addressing racial disadvantage within English professional football coaching. Participants felt that the introduction of the Recruitment Code was a positive first step and a potential stepping stone for further action, with the potential for some success at academy level. However, the general

light of the British legal context			perception was that at present, the EFL's Recruitment Code is a fairly flawed form of positive action. This was particularly due to a general lack of understanding of the Code and a lack of effective implementation, particularly regarding the permitted exceptions and perceived lack of monitoring and enforcement.
	To what extent does the Recruitment Code fit within the legislative framework under the Equality Act 2010?	Chapter 7 - The Legal Framework: Positive Action and Reflexive Regulation	An analysis of the EFL's Recruitment Code in light of the positive action legal framework suggests that the issues with the Code identified in Chapter 6 are exacerbated by a lack of adherence to this legal framework. It cannot be definitively argued that the Recruitment Code would or would not be a legally permissible form of positive action. However, if the Code is required to be considered under Section 159 of the Equality Act 2010, it is likely that there would be a requirement for a tie-breaker situation, where the shortlisted BAME candidate must be "as qualified as" a white candidate that is not invited to interview. Whilst the threshold approach, advocated for by Selanec and Senden (2013), may offer some greater flexibility in this regard, this is not currently the approach taken within the domestic legal context. Furthermore, the tie-break may need to be decided on a case-by-case basis and, at present, this does not appear to be the approach required
	To what extent can the Recruitment Code be considered an example of effective reflexive regulation within the		

	British legal context?		<p>by the EFL's Recruitment Code. However, it should be noted that there is a lack of case law on interview rules as a form of positive action.</p> <p>Further, an analysis of the Recruitment Code in light of Hepple's (2011) requirements for effective reflexive regulation suggests that the Code falls below the required standards. Research participants were critical of the lack of transparency regarding the consultation process with both clubs and BAME managers and coaches, as well as the lack of enforcement. The Recruitment Code's lack of adherence to principles of successful reflexive regulation, of which positive action is an example, adds to the overall emerging perception that the EFL's Recruitment Code is, at present, a flawed form of positive action.</p>
Identify ways in which the EFL's Recruitment Code and positive action can become more	What are stakeholder perceived barriers to the successful implementation of	Chapter 8 – Improving the Effectiveness of the EFL's Recruitment Code	As most participants within this research considered the EFL's Recruitment Code to be a fairly flawed form of positive action in its current format, many participants suggested ways in which the effectiveness of the Recruitment Code could be improved. The suggestions identified were:

<p>effective ways of addressing underrepresentation, within football and beyond</p>	<p>the EFL's Recruitment Code and how can these be overcome?</p> <p>What lessons can be learnt from the introduction of the EFL's Recruitment Code as a form of positive action for English football, sport in England generally, and beyond?</p>		<ul style="list-style-type: none"> • Sanctions for non-compliance, including financial penalties and points deductions. • Improved levels of buy-in and understanding of the Recruitment Code, ensuring that stakeholders understand why the Recruitment Code is needed, how it operates, its scope and its limits. • Ensuring the Recruitment Code forms one part of a holistic package of measures, which also includes measures aimed at increasing diversity amongst decision makers and interview panel members. • A commitment to conducting a full recruitment process in every instance to reduce the reliance on networks-based methods of recruitment. • Ensuring that all levels of the football pyramid are considered when developing measures aimed at redressing disadvantage and underrepresentation.
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		Chapter 9 – Implications and Pointers for Action	<p>In light of stakeholder perceptions on the barriers that BAME managers and coaches face, the use of positive action generally and the EFL's Recruitment Code as form of positive action, as well as the legal analysis in Chapter 7, a series of implications and pointers for action at Micro, Meso and Macro levels were identified.</p> <p>The pointers for action at Micro Level focus on an individual clubs and include:</p> <ul style="list-style-type: none"> • Understanding – clubs should work to assist with encouraging greater understanding of positive action and the EFL's Recruitment Code. • Implementation – clubs should ensure that the Recruitment Code is fully implemented at all levels and for all coaching vacancies, supporting with clear monitoring and evaluation of data. • Environment – clubs should create an environment that enables the Recruitment Code to succeed, ensuring visible senior
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			<p>commitment, training for interview panel members and measures aimed at increasing diversity more broadly.</p> <p>Meso Level in this context refers to the EFL as a governing body, and key pointers for action identified at this level include:</p> <ul style="list-style-type: none"> • Recruitment practices – the EFL should introduce a regulation requiring clubs to operate a full recruitment process in all circumstances and should support clubs by providing interview panel members • Understanding and transparency – the EFL should provide greater transparency on the Recruitment Code, publicising information on the consultation process, as well as clear guidance on the Recruitment Code, supplemented by in-person or online training. The EFL should also introduce a communications campaign aimed at increasing the level of understanding of the Recruitment Code amongst fans. • Implementation of the Recruitment Code – the EFL should provide greater transparency on the extent to which the
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			<p>Recruitment Code is followed by clubs, introducing a kitemark for clubs that comply with the principles of the Code.</p> <ul style="list-style-type: none"> • Holistic life cycle approach – the EFL should ensure that the Recruitment Code is one initiative that forms part of a range of measures aimed at addressing racial disadvantage more broadly, including within head office, executive and director roles. <p>In this context, Macro Level refers to positive action beyond the EFL’s Recruitment Code. Pointers for action in this regard were:</p> <ul style="list-style-type: none"> • Understanding of positive action – the Government and policy makers should introduce clear guidance on positive action that is supplemented by free online training videos on how to effectively introduce positive action measures within organisations. • Conceptual confusion – the Government should consider rephrasing positive action to a term which results in less confusion and conflation with positive discrimination.
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			<ul style="list-style-type: none"> • Reflexive regulation and the specificity of football – the Government should provide further guidance on reflexive regulation and the space it gives organisations to develop their own measures and should review equality legislation more broadly to consider where a reflexive approach can replace existing approaches. The Government should further encourage football organisations to further utilise positive action and reflexive regulation to develop measures that are most suited to football. <p>See Appendix G for a full list of the identified pointers for action.</p>
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